STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN ILLINOIS COMPANY d/b/a Ameren Illinois, Petitioner Rate MAP-P Modernization Action Plan - Pricing Filing	))))))	Docket No. 12-0001

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I. INTRODUCTION

In Initial Briefs, Staff and Interveners rely heavily on the Commission's determinations in the ComEd Docket No. 11-0721 decision as the basis for their positions in this case. IIEC argues that, "The Commission's conclusions of law [in Docket No. 11-0721], and its decisions on how the formula rate statute should be implemented are relevant—and possibly determinative—in this case." (IIEC Init. Br. 20.) Likewise, the AG, Commercial Group, Staff and CUB also cite the *ComEd* order, often at length. (Comm. Gr. Init. Br. 4-6; AG/AARP Init. Br. 76; Staff Init. Br. 57; CUB Init. Br. 33-34.) However, that case is neither final nor dispositive of all issues in this case. On June 22, 2012 the Commission granted ComEd rehearing on the issues of average rate base, average capital structure, and reconciliation interest, among others (a point which CUB's, the Commercial Group's and IIEC's Briefs fail to even acknowledge, despite being filed over two weeks after the Docket 11-0721 rehearing order was entered). As a result, the underlying order in Docket No. 11-0721 does not represent the Commission's final word on the subject and so cannot be utilized by the parties as an authoritative Commission pronouncement on the issue. Moreover, it is well established that the Commission's decisions are not binding precedent, but cases must instead be decided on their facts, circumstances and records. Where the record in this case supports a different conclusion than in Docket No. 11-0721, such different conclusion is warranted. Docket No. 11-0721 should not be followed reflexively. Instead, the ALJ's should make their determinations based on the record of *this* case.

Moreover, with respect to these key case issues (average rate base, capital structure and reconciliation interest) the question is what the legislature has directed with respect to the determination of these issues. What the legislature has directed is reflected in the language of the EIMA, not what parties might wish that language to be. The Illinois legislature has now

confirmed what the appropriate interpretation of the EIMA is. The House of Representatives Public Utilities Committee adopted a Resolution (HR 1157), with almost fifty legislators as co-sponsors, that states, in pertinent part:

> WHEREAS, The Energy Infrastructure Modernization Act further provides in subsections (c) and (d) of Section 16-108.5 that those amounts to be credited or charged to customers following the annual reconciliation process under the performance-based formula rate shall be "with interest" so the utility will be made whole for unrecovered amounts that were prudently and reasonably incurred and customers will be made whole for amounts they overpaid, if any; and
>
> WHEREAS, Such *interest is intended to be set at the utility's weighted average cost of capital*, determined in accordance with the statute, which represents the reasonable cost and means of financing a utility's investments and operating costs, so that the utility and customers are made whole when charges or credits are necessary to reconcile to actual prudent and reasonable investments and costs; and
>
> WHEREAS, The Energy Infrastructure Modernization Act also provides that the final year-end cost data filed in FERC Form 1 should generally be used to determine rates; and
>
> WHEREAS, *No statutory authority was given to the Illinois Commerce Commission to set rate base and capital structure using average numbers that do not represent final year-end values* reflected in the FERC Form 1, and the Illinois Commerce Commission's use of such average is contrary to the statute; and

H.R. Res. 1157, 97th Gen. Assem., Reg. Sess. (Ill. 2011). (emphasis added). The Senate has introduced a similar resolution (SR 821).

The Company believes that this legislative statement makes clear that, as AIC has explained it in its briefs, the EIMA (i) requires use of a year end capital structure, (ii) requires use of a year end rate base for initial rates and reconciliation and (iii) requires use of AIC's weighted average cost. Therefore, on these and other issues, the Commission should follow the record in this case and the direction of the legislature in making its determinations in this matter.

AIC notes that in many instances, parties took positions in Initial Briefs largely similar to those taken in testimony. Thus, many points have previously been addressed in AIC's Initial

Brief. To the extent AIC does not address an issue or argument in its Reply Brief, AIC's position is as set forth in its Initial Brief.

A. Procedural History

B. Legal Framework and Standards

C. Participation in EIMA/Formula Rates without AMI Plan Approval

Staff answers the ALJs' question by concluding if the Commission rejects the AMI Plan on rehearing, then Ameren Illinois' election to be a participating utility under the legislation is without force or fact. (Staff Init. Br. 30.) CUB states ". . . without the ability to make the infrastructure investments upon which its eligibility for a formula rate is conditioned, Ameren cannot remain a participating utility." (CUB Init. Br. 10.) CUB ". . . reserves its conclusion whether or not Ameren should be granted its requested formula rate until the Commission determines whether to grant rehearing and whether if it does, the results of that rehearing. (Id., p. 11.) AG/AARP recommend the Commission proceed with the entry of a formula rate order regardless of any schedule approved in any Commission rehearing of the AMI Plan and that the Commission should proceed to enter an order in the formula rate case by September 29, 2012. (AG/AARP Init. Br. 12.) IIEC offers a number of conflicting or at least confusing statements contingent upon whether Ameren Illinois has "voluntarily committed" to make the infrastructure investments. (Id., p. 25.) IIEC concludes the Commission may have differing options depending on whether rehearing is granted in the AMI Plan case. (Id., p. 26.)

It would seem parties are content to limit or condition their legal analysis with regard to the question at hand, while awaiting the Commission's decision on Ameren Illinois' request for rehearing in its AMI Plan docket. AIC understands their preference (or reluctance) and as it so happens, the Commission granted Ameren Illinois' request for rehearing in Docket No. 12-0244,

and the Company believes the Commission will find that the revised AMI Plan is cost beneficial. In this scenario, Ameren Illinois continues to be a participating utility under the EIMA and expects to have an approved AMI Plan by which to implement its smart grid strategies. Thus, the ALJs' inquiry will become moot.

A more complete and thorough legal analysis regarding the ALJs' question can only be achieved with a full and complete factual basis for the Commission's decisions in the formula rate cases and the AMI Plan. Ameren Illinois recognizes the General Assembly understanding of the voluntary commitments to be made by the utility pursuant to Sections 16-108.5(b) and (b-10), and their nexus to the performance based formula rate tariff. Even so, answering the ALJs' question at this time, without more information, would be premature.

II. RATE BASE

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C. Contested Issues

1. Cash Working Capital

(a) Pass-Through Taxes Revenue Lag

Staff, IIEC and AG/AARP's proposal to assign a zero-day revenue lag to AIC's Energy Assistance Charges ("EAC") remittances (and, related, to its Municipal Utility Tax ("MUT") (Staff) and Gross Receipts Tax ("GRT") (AG/AARP)[1] remittances) is unbalanced, improperly advocates the conceptual over AIC's actual practice, and ignores recent Commission precedent. It should be rejected.

Staff, IIEC and AG/AARP request that the Commission "deny recognition of *any* cash working capital requirement for AIC's EAC remittances." (IIEC Init. Br. 29)(emphasis added); see also Staff Init. Br. 5; AG/AARP Init. Br. 15.) Nevertheless, they would accept (or in IIEC's case, *increase*) AIC's calculated revenue lead for pass-through taxes. (See, e.g., ICC Staff Ex. 14.0, p. 4.) In this way, their proposal is contradictory; the logical result of a zero-day revenue lag for pass-through taxes would be a corresponding zero-day revenue lead. (Ameren Ex. 25.0 (Rev.), p. 7.) But that is not what Staff, IIEC or AG/AARP propose. Such asymmetrical ratemaking is improper. Those parties' unbalanced approach should be rejected.

Moreover, those parties champion the use of a conceptual lag period (based on when, under the statutory requirement, AIC *could* remit the taxes) for pass-through taxes rather than the *actual* lag period calculated by AIC. That is, unlike AIC's approach, their position does not reflect the *actual* timing of cash receipts and remittance payments with regard to pass-through taxes. Such an approach ignores the purpose of a cash working capital analysis.

AIC's cash working capital analysis for pass through taxes is based on *actual* receipt and payment dates. (Ameren Ex. 25.0 (Rev.), p. 5.) Staff adopts that cash working capital analysis in all respects other than pass-through taxes. For example, with respect to the revenue collection

[1] As explained in AIC's Initial Brief (p. 11), GRT are not pass-through taxes and the basis of AG/AARP's recommendation regarding them remains unexplained. (Ameren Ex. 25.0 (Rev.), pp. 22-23.)

lag, Staff advocates the actual collection lag calculated by AIC in its lead-lag study over the conceptual 21-day revenue lag proposed by IIEC based on the Commission's rules regarding minimum the bill payment period. (Staff Init. Br. 6-7.) In this regard, Staff's approach to the cash working capital requirement calculation for pass-through taxes is therefore inherently inconsistent. It should be rejected.

As discussed in AIC's Initial Brief (pp. 9-10), the reality is AIC must bill, collect and process the revenues associated with pass-through taxes and, as such, those funds are collected in the same manner as all other revenues—via the customer's payment of his monthly bill. (Ameren Ex. 25.0 (Rev.), p. 4.) That payment is the *only* vehicle available by which payment of pass-through taxes occurs. (Id., pp. 4-5.) It simply is not possible for AIC to collect the funds associated with the EAC prior to the payment of the monthly bills. (Id., p. 16.) As such, the revenue lag consists of five components; (1) a service lag; (2) a billing lag; (3) a collections lag; (4) a payment processing lag; and (5) a bank float lag. (Id., pp. 6-7.) Staff, IIEC and AG/AARP's proposal, however, ignore all of those components in arriving at their zero-day revenue lag. Their proposal thus has no foundation in reality. (Ameren Ex. 25.0 (Rev.), pp. 6-7.) For this reason as well, it should be rejected.

Staff's assertion that pass-through taxes are not operating revenues and are not included in revenue requirement as operating revenues (Staff Init. Br. 5) is also irrelevant. Whether pass-through taxes are recorded as an operating expense has no relevance to the elapsed time that AIC has access to the funds representing them. In any event, Staff's assertion in this regard is wrong: pass-through taxes *are* recorded as operating revenues by AIC. (Ameren Ex. 25.0 (Rev.), p. 4.)

Staff and IIEC add another red herring when they contend AIC provides no service related to pass-through taxes. (Staff Init. Br. 6; IIEC Init. Br. 29.) That is irrelevant to the net

difference between the receipt of cash and the remittance of funds (in other words, the number of days AIC has access to the funds) on which AIC's lead-lag study is focused. (Ameren Ex. 25.0 (Rev.), p. 5.) Nevertheless, whether or not a service is provided, AIC must still bill, collect and process the revenues associated with pass-through taxes.

In advocating their (unbalanced, conceptual) zero-day revenue lag approach, Staff and AG/AARP also ignore that AIC's treatment of pass-through taxes in its cash working capital calculation is consistent with the Commission's Order in AIC's most rate recent proceeding, Docket No. 11-0282. IIEC, for its part, goes one step further. It contends that Order is inapposite because it was "based on exigencies of state government finances that no longer exist." (IIEC Init. Br. 28-29.) That contention is unfounded. The discussion of this issue in its entirety in the Docket No. 11-0282 Order is as follows:

> There is a single issue with respect to the cash working capital ("CWC") methodology, relating to the lag days associated with Energy Assistance Charges ("EAC") that AIC collects from its customers and remits to the State of Illinois. AIC and Staff agree that the EAC funds are, on average, available to AIC on the 16th day of each month. AIC remits the EAC funds as of the 20th day of each month, and thus calculates that the funds are available to AIC for four days. Staff notes that the enabling legislation requires funds to be remitted by the 20th day of the following month (See 305 ILCS 20/13(f)), and thus calculates that AIC has the use of the funds for up to 35 days.
>
> The question is whether the additional month that AIC could hold the funds should be imputed for CWC purposes. ***If AIC were to change its practices, it would mean that it would effectively remit no EAC charges to the State for one month. Hence, at the test year level of EAC charges, in the first year of the change, AIC would remit about $2.3 million less to the State than it would under its current practices.*** AIC states that this could impact the comprehensive low income energy programs administered by the Illinois Department of Commerce and Economic Opportunity with these funds. AIC requests that, in calculating the CWC requirement, the Commission recognize AIC's past method of remitting this pass-through tax and avoid any negative impacts on the State, low-income customers, and AIC. Staff, on the [sic] hand, contends that ratepayers should not bear the cost of AIC's unnecessary early payment and urges the Commission to base the CWC calculation on AIC's access to these funds and not the date AIC chooses to remit them.

> The Commission understands Staff's position but is not inclined to adopt it. Given the circumstances surrounding the EAC, the Commission does not believe that the adjustment sought by Staff is warranted. The Commission will revisit this issue, however, ***if AIC alters its EAC remittance schedule***.

Ameren Illinois Co., Order, Docket 11-0282 (Jan. 10, 2012), pp. 13-14 (emphasis added). Nowhere in that discussion does the Commission states its finding is "based on exigencies of state government finances," as IIEC suggests. (IIEC Init. Br. 28.) Rather, the Commission explicitly stated it would revisit the issue "if AIC alters its EAC remittance schedule." Order, Docket 11-0282, p. 14. AIC has *not* altered its remittance schedule. (Ameren Ex. 25.0 (Rev.), pp. 7-8, 15.) As was the case in Docket No. 11-0282, AIC cannot simply modify its payment practice; any such change would require substantial time and expense.

Staff and AG/AARP suggest the Commission look past Docket 11-0282 to its final order in AIC's most recent *electric* rate proceeding, Docket Nos. 09-0306 (cons.), for guidance. (Staff Init. Br. 5; AG/AARP Init. Br. 16.) IIEC also points to that Order. (IIEC Init. Br. 28.) In this way, those parties imply that the difference in the utility service at issue (gas versus electric) somehow creates a distinction in the treatment of pass-through taxes in AIC's cash working capital requirement calculation. It does not. To the extent Staff, IIEC and AG/AARP contend it is proper to rely on earlier authority; they should look to the Commission's Order in the Company's 2007 electric and gas consolidated rate proceedings. There, Staff proposed the same zero-day revenue lag for pass-through taxes. And there, as in Docket No. 11-0282, the Commission *rejected* that position:

> With respect to pass-through taxes, Staff proposes to apply zero revenue lag days arguing: that pass-through taxes are not revenue; that AIU provides no service and did nothing to earn pass-through taxes; and investors have provided no investment related to the collection of pass-through taxes. AIU believes pass-through taxes should be reflected in the CWC analysis due to the slight timing difference between AIU's receipt of payment and the remittance of tax revenue.

> ***The Commission reviewed the arguments and, in the context of a CWC requirement, is unable to discern a meaningful difference between pass-through taxes and most other expenses. Customers pay their bills, including pass-through taxes, providing AIU with cash. AIU makes cash payments, including pass-through taxes, to those entities that have a rightful claim. Again, in the context of CWC requirement, pass-through taxes are no different than State or Federal income taxes or employee payroll expense. The Commission therefore concludes that Staff's proposed adjustment to the CWC requirement associated with pass-through taxes is inappropriate and is hereby rejected***.

Ameren Illinois Co., Order, Docket 07-0585 (cons.) (Sept. 24, 2008), p. 62 (emphasis added).

Staff and IIEC also point out the Commission adopted a zero-day lag in Docket No. 11-0721, ComEd's formula rate filing. (Staff Init. Br. 5-6; IIEC Init. Br. 28.) But neither party contends ComEd remits the funds associated with the EAC in the same manner as does AIC. It would be inappropriate to treat all utilities in the same manner with respect to pass-through taxes without considering how each utility treats such taxes. Business & Prof'l People for the Pub. Interest v. Ill. Commerce Comm'n, 137 Ill. 2d 192, 227 (1989) (Commission findings must be based exclusively on the record evidence). In addition, simply because both ComEd and AIC have petitioned for formula rates does not mean that the ratemaking treatments imposed for the two companies need to be, or even should be, identical. (Ameren Ex. 25.0 (Rev.), p. 8.)

Staff, IIEC and AG/AARP's unfounded positions should be rejected. Consistent with its decision in Docket No. 11-0282, the Commission should approve AIC's cash working capital requirement calculations relative to pass-through taxes, which reflects the reality of their receipt and remittance. If, however, as Staff, IIEC and AG/AARP suggest, the Commission finds there is no lag between the timing of receipt and remittance of the funds associated with pass-through taxes, the Commission should set the revenue lag *and* expense lead for them to zero.

(b) Revenue Collection Lag

IIEC's brief employs circular logic to attempt to persuade the Commission to impose an arbitrary 21-day collection lag in AIC's cash working capital calculation. (IIEC Init. Br. 31-33.)

IIEC argues AIC's cash working capital calculation is "flawed" because it, *inter alia* "rests on unsupported assumptions [and] lacks empirical validation . . . ." (IIEC Init. Br. 31.) However, IIEC recommends a 21-day collection lag that has nothing to do with the actual payment practices of AIC's customers. IIEC admits its proposal is "not the result of a separate [cash working capital] study," but rather claims it is a "reason-based surrogate" for AIC's cash working capital study. (IIEC Init. Br. 31.) IIEC's logic then, is that an arbitrary 21-day lag is a proper surrogate for a collection lag methodology, based on actual data, which has been repeatedly sanctioned by the Commission and similar to that employed by other major Illinois utilities. This is illogical. IIEC's proposed revenue lag is not "a reason-based surrogate" because it fails to consider *any* AIC specific customer payment practices. Thus, it is IIEC's argument that is flawed and should be rejected.

IIEC criticizes AIC's methodology for including the use of midpoints, and recommends the Commission require AIC to conduct additional studies that *could* eliminate the need for use of the midpoint assumptions. (IIEC Init. Br. 31-32) (emphasis added.) But, IIEC has failed to demonstrate that any additional study will produce a materially better result, much less justify the time and cost required. Moreover, IIEC has offered no valid reason for discarding the Commission-accepted methodology, or any compelling basis for the additional study (and resultant cost) IIEC recommends.

Furthermore, a collection lag in excess of 21 days does not imply that every customer of Ameren pays his or her bill beyond the due date as IIEC alleges. Mr. Heintz testified that AIC data shows that actual customer payments do not support IIEC's position. (Ameren Ex. 15.0, p. 14.) For example, as of September 30, 2010, approximately 28 percent of AIC's customers had account balances that were in arrears (over 13 percent were over 60 days in arrears), and

approximately 59,000 customers were in deferred payment arrangements with balances totaling approximately $25 million. (Id.)

IIEC acknowledges "there are meaningful consequences associated with not paying by the due date." (IIEC Init. Br. 33.) As Mr. Heintz explained, there is a cost incurred by AIC associated with late payments. (Id., p. 15.) Given the number of customers in arrears during the test year and the length of such arrearages, IIEC's 21-day collection lag does not address the actual costs incurred by AIC. (Id.) Further, the Commission addressed this issue in its Final Order on Rehearing in Docket 09-0306 (cons.) where it stated:

> The Commission believes, however, that inherently, if a customer does not pay its bill in a timely manner, it will be necessary for a utility to finance its operations in interim with an alternate source of capital. This is the entire reason for a CWC allowance and a lead/lag study.

Ameren Illinois Co., Order on Reh'g, Docket 09-0306 (cons.) (Nov. 4, 2010), p. 56.

Thus, IIEC's proposed 21-day figure in no way represents AIC's collection lag, and should be rejected. (AIC Init. Br. 13-14.) Staff concurs. (Staff Init. Br. 6-7.)

AG's apparent argument is that AIC's revenue collection lag should be similar to those of certain utilities outside Illinois, or in the alternative, similar to ComEd's (as recently approved in Docket No. 10-0467). (AG/AARP. Init. Br. 18-29.) AG's position should be rejected, as Staff agrees. (Staff Init. Br. 7.)

Unencumbered by citations to record evidence in this proceeding, AG's brief is rife with innuendo that other jurisdictions must somehow "get it right" and Illinois utilities have bamboozled the Commission (and Staff). AG states: "Mr. Brosch testified that the Commission's recent, repeated acceptance of the utilities' unsubstantiated assumptions about when customer payments are received is *an arbitrary methodology* not commonly used in the states which he has testified." (AG/AARP Init. Br. 20-21.) First, AG fails to cite to where in the

record this claim is made. Second, while a substantial portion of AG's brief is about *other* rate cases of *other* utilities in *other* jurisdictions, AG fails to cite *any* commission order or case decision in any of the "other proceedings throughout the country" upon which its argument relies. (AG/AARP 18-29.) Whether these "other proceedings" are even final, or were the subject of settlement, is unknown. Further, in addressing these extra-jurisdictional proceedings, AG fails to establish how the utilities involved, or the jurisdictions referenced, are in any way comparable to AIC's situation in Illinois. Proceedings relating to different utilities, involving different facts and governed by different public utility commissions subject to different regulatory environments are not relevant to AIC's rate case here. Moline Consumer's Co. v. Ill. Commerce Comm'n, 353 Ill. 119, 126 (Ill. 1933); Antioch Milling Co. v. Pub. Serv. Co. of N. Ill., 4 Ill. 2d 200, 210 (Ill. 1954) (excluding evidence of differing rates where the party failed to demonstrate that the utilities being compared were sufficiently similar to warrant comparison). Indeed, the Commission has recently cautioned "[it] is completely uninformed as to the decisions from . . . other jurisdictions where [it has] no evidence that circumstances are comparable. *Such comparisons are not relevant*." North Shore Gas Co./Peoples Gas Light & Coke, Order, Docket 11-0280 (cons.), (Jan. 10, 2012), p. 137 (emphasis added). As AIC witness Mr. Heintz testified, each of the utilities (referenced by AG in testimony) operate outside of Illinois, have different customer bases and demographics, and likely calculate the revenue lag based on state jurisdiction precedent, and company-specific data and company-specific operations. (Ameren Ex. 25.0 (Rev.), p. 18.)

AIC assumes the Ameren Missouri case to which AG's brief alludes is the case included in Mr. Brosch's rebuttal testimony. However, that case "was resolved in a stipulation that was not binding or intended to be precedential." (AG/AARP 3.0, p. 16, lines 336-37.) In any event,

comparison to Ameren Missouri is not appropriate. First, the revenue lag included in Mr. Brosch's rebuttal analysis represents the results of a lead-lag study produced for the utility utilizing a June 2006 test year. (Ameren Ex. 25.0 (Rev.), p. 19.) It is unclear why Mr. Brosch would use such a dated case for Ameren Missouri when the utility has litigated three electric cases since that case and has recently filed another case. Moreover, Mr. Heintz explained it is unlikely that sister utilities will have the same collection lag. (Id., p. 20.) While the utilities may have the same collections processes in place, the utilities ultimately have a different customer base that will impact the actual collection experiences of each utility. (Id.)

In pointing to other jurisdictions, AG also ignores Illinois. As stated in AIC's Initial Brief, the Commission has previously approved collection lags for Nicor of 33.76 days; Peoples Gas Light and Coke of 32.72 days; North Shore Gas Company of 23.24 days; MidAmerican Energy Company of 25.68 days; and ComEd of 36.32 days. (AIC Init. Br. 15.) Thus, if the Commission were to use the other utilities operating in Illinois as a proxy, AIC compares favorably. Moreover, even with "grace periods," AIC's collection lag is less than that approved in either of ComEd's last two rate cases (Docket Nos. 10-0467 and 11-0721). (AIC Init. Br. 15.)

AG also argues that "Since these grace period assumptions were found reasonable for ComEd, there is no reason to apply different assumptions in AIC's lead lag study calculations." (AG/AARP Init. Br. 25.) This argument has no merit. On one hand AG criticizes the Commission for adopting an allegedly arbitrary methodology, but then advocates an arbitrary adjustment, simply because it produces results more agreeable to AG. Not only did Mr. Brosch admit the ComEd methodology was arbitrary (Tr. 435-35), but the record in this proceeding provides no evidence that the adjustment proposed by ComEd has any applicability to AIC or its customers' payment patterns.

For the foregoing reasons, and those set forth in AIC's Initial Brief, the Commission should reject AG's unsupported, unreasonable and arbitrary recommendation.

For the first time in this proceeding, CUB addresses this issue in its Initial Brief and supports AG/AARP's recommendations. (CUB Init. Br. 13-14.) CUB's argument is simply a recitation of AG/AARP witness Mr. Brosch's testimony, leaving nothing more from which AIC can respond.

(c) Income Tax Lead and Lag

The Commission should adopt AIC's calculation of cash working capital with respect to income tax expense at the amount included in the revenue requirement. The Commission has a long-standing practice of not considering current and deferred income taxes separately. Staff concurs. (Staff Init. Br. 7.) Also, the use of statutory tax payments and dates for purposes of the lead-lag study is consistent with the Commission's prior treatment of income taxes.

As AIC explained in its Initial Brief, the differentiation between current and deferred income tax expenses can swing between rate filings, reflecting then current tax laws. (AIC Init. Br. 17.) The use of statutory tax rates and payment dates maintains a consistent treatment of income tax expense for ratemaking purposes and avoids such swings in balances. (Id.) AG also ignores the fact that both the Commission and Staff have accepted AIC's calculation of income tax expense based upon the statutory tax rates and payment dates in prior rate proceedings.

Further, AG does not recognize that the cash working capital calculation includes other items as calculated for revenue requirement purposes. For example, return on equity is deducted from operating revenue at an amount equal to rate base multiplied by the weighted cost of capital, not actual dividends paid. Interest expense is an amount calculated on the interest synchronization schedule and not interest actually paid. The cash working capital calculation of bank facility fees includes a normalized amount of one-time up front charges to issue debt or

obtain the credit facility, not actual cash payments. Pension expense in the cash working capital calculation does not represent actual cash pension contributions either.

Additionally, the ComEd case upon which AG relies to support its position is clearly distinguishable from this case. ComEd calculates income tax expense based on actual rates, not statutory rates as AIC does. Thus, AG's argument that AIC should be treated the same as ComEd when the two utilities use different methodologies has no merit and should be rejected. The Commission should reject AG's recommendation as contrary to Commission practice.

(d) Vacation Pay

As discussed in the Company's Initial Brief (AIC Init. Br. 18, 28-32) and further below in Section II.C.4 ("Accrued Vacation Pay as Operating Reserve"), the appropriate ratemaking adjustment to account for the lag between the accrual and payment of vacation pay expense is the modification to the cash working capital calculation presented by AIC on rebuttal. Since the incremental variation in the annual accrued expense is the change reflected in AIC's income statement, the modification to the calculation of payroll expense leads should reflect that incremental change. No further rate base adjustment to deduct the accrued liability is warranted.

2. ADIT – FIN 48

Staff and AG/AARP continue to insist that FIN 48 amounts should be deducted from rate base, based solely on the premise that FIN 48 amounts represent "non-investor supplied capital." (Staff Init. Br. 8.)

The problem with Staff's proposed treatment of FIN 48 amounts is that it focuses on an eventuality that is the *least likely* to happen; namely, that the IRS will allow the tax deductions for which FIN 48 amounts are presently being accrued. If this happens, "customers would not receive the benefit of the deferred tax credits until the first rate case after the IRS completes its review of the issues that gave rise to the FIN 48 reserve." (Id., p. 9.) But Staff and AG/AARP

are silent about the consequences of the *most likely* scenario occurring. Under the scenario deemed "more likely than not," the IRS will disallow the deductions and the FIN 48 amounts will have to be repaid, along with penalties and interest. (Ameren Ex. 18.0, p.10) Rates established in this proceeding will continue to reflect a rate base which assumes the Company has use of "non-investor" funds that, in fact, it does not. Staff is righteously indignant about "protecting" ratepayers if the least likely scenario comes to pass, but indifferent to AIC should the more likely scenario occur.

Several other points deserve mention. The first is that AIC is not attempting to "increase rate base" by FIN 48 amounts (CUB Init. Br. 15). AIC merely objects to a reduction of rate base by amounts that are not ADIT.

Second, FIN 48 amounts are *not* interest free capital supplied by ratepayers (IIEC Init. Br. 34, 37.) Tax expense would be the same whether or not AIC took the uncertain tax positions. If AIC has to pay the tax assessments, it will be to the taxing authorities—because the taxing authorities are the source of the funds being held. Ratepayers have absolutely nothing to do with these funds. It is entirely between the Company and the IRS.

Third, the funds are non-investor funds insofar as their source is not the providers of long term debt or equity who intended to make an investment in AIC. The FIN 48 funds were, instead, provided by the taxing authorities. These amounts are no different in character than amounts owed by AIC to vendors, which are also "non-investor funds," but that does not make them ADIT or cost-free.

Staff and AG/AARP continue to make hay over the FERC's pronouncement of how FIN 48 amounts should be reported to that agency. In arguing that ICC ratemaking should follow FERC financial reporting, the best they can come up with is that "[t]his case uses a formula

based upon the FERC Form 1 costs; thus, the FERC guidance is especially relevant." (Staff Init. Br. 9.) With all due respect, it is not. The very guidance that Staff relies on says that it pertains *only* to financial accounting and reporting. (See Id., p. 10, *citing* ICC Staff Ex. 10, pp. 10-11.) And FERC *expressly* disclaims that its financial reporting requirements dictate any specific ratemaking treatment for FIN 48 amounts–at the FERC or anywhere else. (Id.)

If the Commission accepts Staff and AG/AARP's adjustment, the Company can only interpret this as a signal by the Commission that it does not want utilities to take uncertain tax positions. There is simply no reason whatsoever for a utility to take the chance if rate base will be reduced by the amount of uncertain tax positions taken.

3. ADIT – Projected Additions

Staff believes the Commission should adopt AG/AARP's adjustment for no reason other than the Commission adopted the adjustment in ComEd's formula rate proceeding, Docket No. 11-0721. (Staff Init. Br. 11.) Given the Commission's denial of rehearing on this issue in the ComEd docket, AIC harbors no illusion that the outcome in this proceeding will be different. To preserve its appellate rights, AIC stands on the existing record and its Initial Brief.

4. Accrued Vacation Pay as Operating Reserve

The crux of the parties' adjustment to deduct the accrued liability for vacation pay from rate base—and the crux of the Commission's rate base deduction in ComEd's formula rate proceeding—is the premise that the accrual represents a "source of non-investor supplied capital." (Staff Init. Br. 11, 13.) The only problem with that premise is that it is inherently false. As AIC explained in its Initial Brief, AIC accrued and paid out vacation time earned in 2010 *before* it even filed this formula rate petition. (AIC Init. Br. 28-32.) And in subsequent years, AIC again will have accrued and paid out vacation time earned *before* its formula rates will be updated. AIC will *always* be behind on cash collections for this expense item. There is no cookie jar of

money financed by ratepayers that AIC is keeping for a rainy day. Indeed, not one dime of 2010 accrued vacation expense will have been collected from ratepayers before the Commission's order in this proceeding—well after AIC has paid this expense. The Commission should reject Staff, AG/AARP and CUB's adjustment to deduct the amount of the accrual from rate base.

Like other accrued expenses, the recording of vacation pay expense must take place at the time the service is rendered, and the cash disbursement must take place at a future point in time. (Tr. 553-54.) This accounting adheres to generally accepted accounting principles (GAAP). (Tr. 451, 554.) The expense is recognized in the period when the employee provides the services that qualifies him or her for the compensated absence. (Tr. 554.) The employee then cashes in on that earned absence at a later date after the services are provided. (Id.) This represents the lag between the accrual and pay out of vacation expense. (Tr. 451.) For AIC, the undisputed record evidence shows that that lag is approximately one year. (Tr. 452-53, 555.) Each year AIC records an accrual for the vacation pay expense earned that year. (Tr. 354-57.) And each year AIC reverses the prior year's accrual that will be paid out in the current year. (Tr. 558.)

According to Staff, an accrued expense is "a source of non-investor supplied capital" if the accrual is based on funds that already have been "supplied by ratepayers." (Tr. 450.) "[F]or a liability balance to represent a source of non-investor supplied capital [however], the assumption is that the utility receives the capital through rates *before* it has paid the expense[.]" (Tr. 451-452) (emphasis added.) The prototypical example is the Commission's recent treatment of the OPEB liability. See, e.g., Ameren Illinois Co., Order, Docket 11-0282 (Jan. 10, 2012), p. 14. The theory there has been that utilities have recovered OPEB expenses in rates that they have retained. Thus, the OPEB liability represents the accumulated amount that remains unfunded by the utility. That is not and cannot be the case here. Each year AIC makes an

accrual for the amount of vacation pay that will be earned that year. The next year AIC pays the expense for the prior year, reverses the prior year accrual, and makes a new accrual for the current year's earned vacation pay. The utility accrues, and then it pays; it accrues, and then it pays. This cycle ensures that there is not—and cannot be—a constant build-up of accumulating, unpaid expense that AIC has previously collected in rates and retained. The accrual thus represents, not the amount that AIC has kept, but the amount that AIC will most certainly pay in the following year.

That AIC will fully pay this accrued expense within a year—albeit after 2010—proves that the accrual cannot represent "a source of non-investor supplied capital" for the simple reason AIC will have paid out its accrued expense *before* it collects that expense in rates. Any vacation pay expense accrued in 2010 was paid out in 2011 *before* this case was filed and *before* rates from this proceeding go into effect. (Tr. 454-55.) The same will hold true in future formula rate filings. Any expense accrued in 2011 will be paid out in 2012 before it is collected in rates in 2013. Any expense accrued in 2012 will be paid out in 2013 before it is collected in rates in 2014. Proponents of a rate base reduction contend the liability is "ongoing" and "constant." That is true. But so is AIC's payment of the expense. And AIC's payment of the expense will always precede AIC's recovery of the expense in rates. The lag between the time AIC pays out vacation expense and the time it collects the expense in rates for that particular year guarantees the accrual cannot be a free source of ratepayers funds to finance rate base. (Tr. 455, 457.)

The vicious circle favored by proponents of the rate base deduction, however, guarantees AIC is never fully compensated for its vacation pay expense. If a rate base deduction is adopted here, the rates effective for the remainder of 2012 will not fully recognize the vacation pay expense accrued in 2010 and paid out in 2011. If a rate base deduction is adopted in AIC's

update proceeding (Docket No. 12-0293), the rates effective for 2013 will not fully recognize the vacation pay expense accrued in 2011 and paid out in 2012. And so on. As a result, AIC will never be made whole. The rate base reduction will not be adjusting the revenue requirement for funds already collected. It will be withholding funds from the revenue requirement already paid.

AG/AARP contends "[i]n determining rate base, a utility must take into account the fact that not all of the expenses it accrues in a given time period will be paid out in that same time period." (AG/AARP Init. Br. 41.) That payment of the accrued vacation pay expense occurs in the year after the expense is accrued does not mean the rate base deduction of the entire accrual is appropriate. AIC agrees with Staff, AG/AARP and CUB that the lag between the accrual and payment of the expense must be accounted for. And it has. On rebuttal, AIC modified the calculation of payroll expense lead days to reflect the longer lag between the accrual and payment of vacation expense. (AIC Init. Br. 30.) Proponents of the rate base reduction complain that AIC's adjustment to cash working capital doesn't go far enough. (CUB Init. Br. 22.) They are wrong. Since the only portion of accrued expense included in the income statement is the annual change in the accrued amount, the cash working capital calculation should be adjusted to include only the annual variation. (AIC Init. Br. 30.) No party disputes that the income statement reflects only the incremental change. (Tr. 558.) And no party has recommended a different calculation of cash working capital to reflect the full accrual of vacation pay. (Tr. 561.)[2]

An adjustment to deduct the vacation pay accrual from rate base is unprecedented. It has

[2] CUB argues the "basic matching principle" requires the reduction to rate base for the accrued liability balance because the related ADIT debit balance is included in rate base. (CUB Init. Br. 22.) As explained by AIC's briefing however, since the accrued liability is a current liability associated with payroll expenses, the appropriate reflection of the payment lag is in the cash working capital, not as a rate base deduction. (Ameren Ex. 13.0, p. 20.) In any event, if the "matching principle" did apply, the appropriate middle ground would be to remove the ADIT asset ($5.25 million) from rate base. (Ameren Ex. 23.0 (Rev.), p. 13.) Since customers have not funded the liability however, neither the accrual nor the related ADIT asset should be removed from rate base. (Id.)

never been adopted in prior AIC electric or gas rate. (Tr. 448, 552-53.) It has never been adopted in any prior utility case. The singular anomaly is the Commission's decision in ComEd's formula rate order, Docket No. 11-0721. (Tr. 449, 553.) Staff urges the Commission to adopt the same adjustment here to "maintain consistency in formula rate filings." (Staff Init. Br. 13.) But the record in this proceeding demonstrates that the premise for the adjustment is fundamentally flawed. To adopt the same adjustment for the sake of consistency, when the manifest weight of evidence in this proceeding demonstrates the adjustment is improper, would not be appropriate. Staff, AG/AARP and CUB's rate base deduction should be rejected.

5. Account 190 Asset – Unamortized ITCs

AIC established in its Initial Brief that the Account 190 adjustments recommended by AG/AARP and CUB should be rejected. Staff, however, unexpectedly contradicted the position of its own witness and supported one of the adjustments. As no party (including Staff) has offered any sound basis to make either adjustment, they must be rejected.

- No Party has Justified Eliminating the Unamortized Balance of Investment Tax Credits from Rate Base.

Staff's New Position is Incorrect and Contradicted by the Testimony of Its Own Witness.

Staff witness Hathhorn recommended rejecting CUB and AG/AARP's proposal to remove unamortized investment tax credits ("ITCs") from rate base. She explained that AIC's "approach . . . is symmetrical and consistent with its latest Commission order." (ICC Staff Ex. 10.0, p. 5, lines 105-107.) Therefore, she concluded, "[t]he AG/AARP and CUB adjustments should not be accepted." (Id., line 107.) This testimony was never revised or corrected. (See Tr. 229, 231.) On the stand, Ms. Hathhorn made an ambiguous statement. At the time AIC adopted AG/CUB's proposed expense treatment (in the midst of a case last year), "the deferred asset was not in rate base, and so that would be a correction to the symmetrical—that would be a difference

from the symmetrical treatment." (Tr. 231, lines 4-7.) What this statement means is unclear, and the ambiguity was never clarified. In response to an objection by the Company, counsel for Staff asserted that whatever Ms. Hathhorn meant, she was *not* correcting her direct testimony (id.), in which she rejected the ITC adjustment on the grounds it was asymmetrical.

Nevertheless, despite the contrary testimony of its own witness, Staff now asserts that the Commission "*should* accept the AG/AARP and CUB adjustment to rate base to remove [the unamortized ITC balance]." (Staff Init. Br. 13) (emphasis added.) In its initial brief, the Company already rebutted the position now taken by Staff. Only a few comments need be added.

First, Staff has picked a fight with a straw man. Its only response to AIC's position is to assert, "The Company cites to [sic] no authority other than its own opinion that it 'believes' it is appropriate to include the deferred tax asset in rate base since." (Id., p. 14.) This is not true, as even a cursory reading of the Company's testimony would show. Oddly, Staff does not cite any of the Company's prefiled testimony in support of this point—in fact, it never acknowledges or cites that testimony anywhere in its brief. Staff need not agree with AIC's position, but it should not misstate it: the Company did not merely express its "belief" that the issue should be settled in its favor. The Company's expert witness, Mr. Stafford, provided a detailed explanation of AIC's position on this issue in rebuttal (Ameren Ex. 13.0, pp. 24-25), surrebuttal (Ameren Ex. 23.0 (Rev.), pp. 15-18), and on the stand (Tr. 294-99, 338-41). Those pages do not simply repeat over and over again that the Company believes its position is correct. By acting as if the Company's arguments are not there, Staff fails to come to grips with them.

In favor of the adjustment, Staff points out that when AIC initially accepted a reduction to income tax expense (in Docket No. 11-0282), "no deferred tax asset for ITCs was included in rate base." (Staff Init. Br. 13.) This is beside the point. Whatever happened in an earlier case

does not, by itself, establish the appropriate ratemaking treatment—and that is particularly true when the issue was not litigated. In Docket No. 11-0282, the ITC expense reduction was *not* proposed by the Company, but by other parties, and the Company accepted the adjustment midstream. Thus, whether the adjustment was correctly implemented was not litigated. Moreover, there is no long-standing historical practice applicable here; the case was filed last year. At best, the failure to include the ITC asset in rate base provided the other parties with a temporary windfall; but it does not cure the asymmetry problem nor mean that it can never be cured.

Again, the question goes to correct treatment. If the expense-reducing effect of the tax asset is going to be recognized, then the asset itself should be recognized as well. Symmetry is a fundamental principle of ratemaking, and Staff, AG/AARP and CUB's proposal runs afoul of it. See, e.g., Commonwealth Edison Co., Docket. 05-0597, 2006 Ill. PUC LEXIS 38, at *109-10 (May 4, 2006) (recognizing ratemaking principle of symmetry); Rulemaking to Implement Order 91-0050, Docket 92-0274, 1994 Ill. PUC LEXIS 472, at * (Nov. 22, 1994) (concluding that a certain proposed regulatory method "is flawed" because, *inter alia*, "it does not treat externalities symmetrically"; "[i]n any rational economic evaluation process, costs are offset with attendant or consequential benefits"). As AIC explained in its Initial Brief, the proposal to remove the deferred tax asset from rate base is asymmetrical: it recognizes the tax benefit through a reduction to expense, yet removes the benefit-generating asset from rate base. One or the other is fair. Not both.

AG/AARP and CUB's Position Lacks Merit.

In addressing the ITC issue in their initial briefs, AG/AARP and CUB simply reproduce their respective witness's testimony in the form of a brief. As such, the Company has already fully responded to their positions in its initial brief. (See AIC Init. Br. 32-36.) It will

reemphasize merely one point here.

Both parties continue to assert that unamortized ITCs cannot be "added" to rate base. (AG/AARP Init. Br. 45; CUB Init. Br. 23.) This is demonstrably false. Both parties acknowledge that one acceptable method of recognizing the ITC tax benefit is to *reduce* rate base. (Id.) Think this through: if the underlying asset cannot be part of (or "added" to) rate base, then how is it that one method of recognizing the tax benefit is to "deduct[]" it from rate base? (CUB Init. Br. 23.) Rate base reduction would not be an option if the asset was not in rate base to begin with. Under the intervenors' logic, the options for recognizing ITCs are (*1*) a rate base reduction and no expense reduction or (*2*) an expense reduction *plus no rate-base recognition whatsoever*. This makes no sense—indeed, as AG/AARP acknowledges, under "the Internal Revenue Code, the deferred investment tax credit cannot be deducted from rate base." (AG/AARP Init. Br. 44.) Yet that is exactly what the intervenors would have the Commission do.

In short, the tax guidance referenced by the intervenors does not speak of "adding" the value of the credits to rate base *because it necessarily assumes that the credits are already there*. Again, the only reason the asset is being "added" in this case is because an incomplete recognition of the credits occurred midstream in the prior case (when the expense reduction was first recognized). That the asset was not "added" in Docket No. 11-0282 may have provided a windfall in that case, but it provides no basis for permanent asymmetrical treatment.

Again, if the expense benefit of these assets is going to be recognized, then the value of the asset should be recognized, too. And if the asset is going to be ignored, then the expense benefit should be ignored, too. Staff, AG/AARP and CUB are simply trying to have it both ways. The adjustment must be rejected.

6. Account 190 Asset – Step-Up Basis Metro

AG/AARP also argues that the Commission should make its proposed "step-up basis Metro" adjustment to reduce the Company's rate base. For the most part, AG/AARP simply resubmits its witness's testimony on this point; the Company fully responded to that testimony in its Initial Brief. (AIC Init. Br. 36-38.) Staff agrees with the Company that this adjustment should be rejected. (Staff Init. Br. 14.)

AG/AARP does bring up one new argument, however. It states that the Company "booked income . . . and is now seeking to have ratepayers pay a return on the asset that was recorded in associate [sic] with that income." (AG/AARP Init. Br. 48.) There are numerous problems with this argument. Two are procedural: because the issue was not raised until after the hearing, it is waived, and it lacks necessary record support. Moreover, it is plainly dependent on a selective reading of the facts and is contradicted by the record.

The New Argument Is Waived.

First, the new argument—that the entries to income and to account 411 somehow resulted in an investment gain to the Company—was never raised at any point prior to the filing of initial briefs. By withholding this theory until it filed its Initial Brief, AG/AARP deprived AIC of an opportunity to present its own responsive evidence and to cross-examine the sponsoring witness. This, in turn, severely limits the Company's ability to respond on the merits. The new argument and the questions it raises—what was the effect of the alleged entries? Did other entries offset them?—requires understanding complex accounting issues and are extremely fact intensive. Yet the Company has had no opportunity to offer testimony providing a proper explanation of the entries.

For this reason, AG/AARP's new argument cannot be fairly considered or relied upon by the Commission; it should be considered waived. Ill. Bell Tel. Co., Docket 01-0120, 2002 Ill.

PUC LEXIS 684, at *19–20 (July 10, 2002) (the Commission will "not consider" issues "raise[d] for the first time after trial" where the party was "afforded the opportunity to present evidence" but did not); Cent. Ill. Pub. Serv. Co. v. Wayne-White Counties Elec. Coop., Inc., Docket 92-0463, 1994 Ill. PUC LEXIS 283, at *16 (July 7, 1994) ("it is reasonable to reject [an] argument on procedural grounds" where "had [the] issue been raised" when other issues were raised, it "could have been addressed in the stipulation or in evidentiary hearings"); Interstate Power & Light Co., Docket 07-0246, 2007 Ill. PUC LEXIS 160, at *41 (Nov. 28, 2007) (holding that where Staff's argument was "factually unsupported" and it "fail[ed] to cite the record" that "Staff has waived Commission consideration of this argument"); Citizens Util. Bd., Docket 03-0592, 2004 Ill. PUC LEXIS 408, 87–88 (July 21, 2004) ("The Commission notes PESCO did not present evidence concerning [a certain contention]. Therefore, PESCO has waived its right to have the Commission consider its contention . . . ."). This also means that adopting AG/AARP's adjustment on this newly argued basis would deprive the Company of due process. Cf., e.g., WPS Energy Services, Inc., Docket 00-0199, 2001 Ill. PUC LEXIS 597, at *70-71 (May 9, 2001) ("With regard to due process concerns, the Commission notes that WPS received, among other things, . . . an opportunity to present evidence and to cross-examine the Staff witness"); Alton & S. R. Co. v. Ill. Commerce Comm., 316 Ill. 625, 630 (1925). Therefore, the new argument must be rejected out of hand.

The New Argument Lacks Record Support.

Moreover, given that the argument was first raised after hearing, it not surprisingly lacks record support. The argument contains a single citation to the record, and that citation establishes only that certain entries were made to Account 411. That is it. It provides no support for any of the follow-on propositions of AG/AARP's argument, which lack any citation to the record (not even an "id."). (See AG/AARP Init. Br. 48.) Those points include the following

assertions:

- that "the Company booked income at the time of the transfer";
- that the Company "is now seeking to have ratepayers pay a return on the asset";
- that the asset "was recorded in associate [sic] with that income";
- that "[t]he deferred tax debit balance is, in effect, the other side of a gain booked at the time of the asset transfer";
- that AIC "booked a gain on the transfer of assets between affiliates"; and
- that customers will be "required to pay a return on an asset."

(Id.) Each one of these propositions is unsupported. Contrary to these unsupported assertions, as explained in the Company's Initial Brief, the unrebutted evidence shows that the transfer was zeroed out and thus has had no effect on rates. (See AIC Init. Br. 36-38.) So AG/AARP's argument that AIC is now seeking "a return on an asset" not only lacks its own record support (see id.) but also is contradicted by the record.

The Commission cannot accept the adjustment on this basis. It "must make findings in support of its decision, and support for the findings must exist in the record." People ex rel. Madigan v. Ill. Commerce Comm., 964 N.E.2d 510, 524 (Ill. Ct. App. 1st Dist. 2011) (internal quotations omitted); Atchison, T. & S. F. R. Co. v. Ill. Commerce Comm., 335 Ill. 624, 638–39 (1929) (the Commission's "findings must be based on evidence presented in the case, with an opportunity to all parties to know of the evidence to be submitted or considered, to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal, and nothing can be treated as evidence which is not introduced as such"); 83 Ill. Adm. Code §200.800(a) ("Statements of fact in briefs and reply briefs should be supported by citation to the record"). AG/AARP's new theory for this adjustment lacks evidentiary support and must also be rejected on that basis.

The New Argument Is Based on a Self-Evidently Selective Reading of the Evidence.

Finally, while the Company cannot offer a complete response to AG/AARP's new argument given its out-of-order presentation, simply reviewing the materials cited by AG/AARP shows that it is not telling the whole story. AG/AARP does not provide any explanation of the evidence it cites. The cited portion of the transcript shows that only two sets of entries on the cited cross exhibit were discussed, namely, to accounts 190 and account 411. But the cross exhibit cited by AG/AARP[3] makes plain that there were numerous entries associated with the metro transfer, not just to accounts 190 and 411, but to accounts 282 and 410 as well. AG/AARP does not even acknowledge these additional entries, much less explain them. Moreover, the Cross Exhibit only confirms what AIC already showed: that each entry to account 190 (which are the only entries challenged here) is canceled out by entries to the account 282. (See AIC Init. Br. 36-38.)

Thus, this new argument still fails to address the core problem with the proposed adjustment. If AG/AARP will insist on reversing the entries to Account 190, then the contemporaneous, offsetting entries must be reversed as well. While it might serve AG/AARP's ends to undo only half of the accounting related to this transfer, such asymmetry would be inappropriate and unfair. It must be rejected.

7. CWIP Not Subject to AFUDC

Staff and AIC agree the year-end 2010 balance of CWIP not subject to AFUDC should be reduced by the project amounts also included in AIC's projected plant. (AIC Init. Br. 38.) In other words, Staff and AG agree that some level of CWIP can be included in year-end rate base, to the extent the projects are not included in projected plant. (Id.) This adjustment avoids any potential for double counting plant investment and should be the adjustment approved.

[3] AG/AARP cites Cross Exhibit 1, but the correct document appears to be Cross Exhibit 2.

AG/AARP and CUB, however, propose an additional adjustment to remove one more CWIP project from rate base. (AG/AARP Exs. 3.0, p. 33; 3.1, p. 7.) They claim that vendors, rather than shareholders, have funded 100% of the charges for this project. (AG/AARP Init. Br. 48; CUB Init. Br. 24.) That simply is not true. The record shows that a portion of the costs were paid by AIC prior to year-end 2010, and $149,142 of the total CWIP balance of $149,382 (99.84%) was paid by AIC by January 5, 2011. The remaining $240 was paid in February and May 2011—well in advance of recovery of such dollars in rates.

AARP and CUB's reliance on the Commission's decision in Docket No. 10-0467 (where $12.6 million of CWIP was at issue) is unavailing. In Docket No. 10-0467, the Commission rejected AG/AARP and CUB's proposed adjustment to remove CWIP projects from rate base. The Commission found, "As long as there is a preponderance of evidence that the projects that are being funded by CWIP will be placed in service within 12 months from May of 2011, inclusion in rate base of CWIP-funded projects is proper." Commonwealth Edison Co., Order, Docket 10-0467 (May 24, 2011), p. 30. Moreover, the Commission could not state that all of the projects were vendor-financed and the record did not look at the lag between the time the charge was booked and payment occurred. In this proceeding however, the lag has been examined and the record shows that over 99% of the project was paid by AIC by the beginning of 2011. The project AG/AARP and CUB seek to disallow cannot be said to be vendor-financed. As a result, AG/AARP and CUB's adjustment to remove one additional CWIP project should be rejected.

8. Average Rate Base – Projected Plant/ADR/ADIT

Only two parties recommend that initial, or inception rates for a given year be set using an average rate base: IIEC and the Commercial Group. Their positions can be rejected for the following reasons:

- IIEC's position is based on a misunderstanding of the concepts of "rate year" and the year for which plant additions are projected;
- The use of average rate base to set initial formula rates was rejected in the ComEd decision in Docket 11-072; and
- Staff rejects use of an average rate base to set initial rates. Even Commercial Group acknowledges that AIC's position on this issues "may not be unreasonable."

The initial formula rates are set based on "final data based on its most recently filed FERC Form 1, plus projected plant additions and correspondingly updated depreciation reserve and *expense for the calendar year in which the tariff and data are filed*", not for the rate year (year rates are in effect) as IIEC alleges. 220 IILCS 5/16-108.5(c). Thus, as explained below and in AIC's Initial Brief (p. 40), at the beginning of the rate year, the projected plant additions on which the rates in the rate year are based will be 100% in service and serving customers.

In addition, use of an average rate base for inception rates would increase regulatory lag. For example, in May 2013 AIC would file an update of its cost inputs, plus projected plant additions for 2013, with rates effective January 1, 2014. If an average rate base was used for the 2013 plant additions, half of the projected 2013 plant additions would not be recovered in rates until after the May 2014 update filing rates went into effect in January 2015, over a year later. IIEC argues that the decision in ComEd Docket No. 11-0721 implicitly rejects AIC's statutory construction on year-end versus average rate base. But this is not correct. Although the Commission did reject the use of year-end rate base for reconciliation purposes, the Commission has granted rehearing on that issue. See Notice of Commission Action, Docket 11-0721 (June 22, 2012). Moreover, with respect to the issue of initial rate base, the Commission in Docket 11-0721 *rejected* use of an average rate base. That issue is not on rehearing. And the record in this case confirms that the same result is appropriate here. IIEC's extensive arguments that disparate treatment of issues in the AIC versus ComEd cases are "unsupported and unlawful" therefore

serve to do nothing more than undermine IIEC's position that initial rate base should be set using an average.

Staff rejects the use of an average rate base for setting initial rates. AG also does not perceive a concern with using a year-end rate base for initial rates. (AG/AARP Init. Br. 79.) Therefore, IIEC's position should be rejected.

9. Other

III. OPERATING EXPENSES

A. Overview

B. Uncontested or Resolved Issues

1. Adjustment for Athletic Ticket/Event Expenses

2. Adjustment for Contributions to Political Groups/Quincy Gems

3. Adjustment for EEI Memberships Dues Allocated to Lobbying

4. Correction for Previously Disallowed Depreciation Expense

C. Contested Issues

1. Section 9-277 Donations/Charitable Contributions

Section 9-227 provides a utility may recover charitable contributions made "for the public welfare *or* for charitable scientific, religious or educational purposes." 220 ILCS 5/9-227. In ComEd's formula rate proceeding, the Commission found that donations are recoverable under Section 9-227's "public welfare" prong, if they "contribute to the general good of the public." Commonwealth Edison Co., Order, Docket 11-0721 (May 29, 2012), p. 98. Organizations that "promote community and economic development," the Commission concluded, "contribute to the general good of the public." Id. Accordingly, the Commission allowed ComEd to recover donations to community and economic development organizations in its formula rates.

Staff now argues the Commission intended to find the exact opposite. According to Staff, what the Commission meant to say was that donations "for the public welfare" must be made to organizations that are tax exempt under Section 501(c)(3) of the Internal Revenue Code. (Staff Init. Br. 18; see also Tr. 484-86; Ameren Cross Exs. 10, 11 (AIC-Staff 6.01, 6.02).) As it turns out, community and economic development organizations just happen to be non-profits that qualify for tax-exempt status under a different subsection of the Code—Section 501(c)(6). Ergo, Staff contends, the Commission erred in allowing ComEd to recover donations to these non-501(c)(3) groups.

The Commission rejected Staff's original strained construction of Section 9-227 in ComEd's formula rate docket. It should similarly reject Staff's newfangled interpretation here. The "public welfare" prong of Section 9-227 cannot be read so narrowly as to only allow the recovery of donations to organizations considered "charitable" Section 501(c)(3) organizations. The plain language of Section 9-227 does not support that interpretation. The Commission's order in Docket No. 11-0721 does not support that interpretation. And the Commission's justification for including donations to community and economic development organizations in rates does not support that interpretation. As a matter of law and of policy, Staff is in the wrong.

Section 9-227 categorizes the four types of donations recoverable in rates: donations are recoverable if made "for the public welfare *or* for charitable scientific, religious or educational purposes." 220 ILCS 5/9-227 (emphasis added). Staff now urges the Commission to "narrowly define [the] public welfare" category—more narrowly that it did in ComEd's formula rate docket. (Tr. 487.) Staff argues the Commission's final order in Docket 11-0721 and the Commissioners' public comments "presumed" and "implied" that only tax deductible, charitable contributions to 501(c)(3) can be recovered under the "public welfare" prong. (Staff Init. Br. 17.) In other words,

it really did not matter to the Commission whether the organization "contribute[s] to the general good of the public." It only mattered whether the donation was tax deductible to the donor.

As explained in the Company's Initial Brief, the federal tax code is not the standard for determining what contributions to include in rates under Illinois law. Section 9-227 is the standard. And Section 9-227 does not limit cost recovery for donations based on the recipient's tax-exempt status, or for that matter, whether the donation is tax deductible to the donor. For Staff's reading to be reasonable, one would have to assume that the General Assembly intended "for the public welfare" to mean "to organizations that are tax-exempt under Section 501(c)(3)." But those words appear nowhere in the statute. Nor should they be grafted onto it. Such a construction is an absurd perversion of the statute. Even if one could credibly argue that "charitable" means "tax-deductible," "charitable" does not even limit the "public welfare" prong of Section 9-227. The Commission should continue to read the plain language of "for the public welfare" as meaning donations that "contribute to the general good of the public." Staff's reading of the "public welfare" prong of Section 9-227 should be rejected as unreasonable.

Staff tries to bolster its case by trotting out an accusation made in Staff's rebuttal. Staff claims, "The Company has a policy of seeking recovery from customers *only* for those donations made to Section 501(c)(3) organizations." (Staff Init. Br. 17.) This is only a contested issue, Staff suggests, because AIC "has not followed its own internal policy concerning donations made for the public welfare which are not tax deductible" (Id.) If that were the case, perhaps Staff's point would carry some weight. But as the Company already made clear in its surrebuttal testimony, Staff mischaracterizes the Company's policy for seeking cost recovery of donations under Section 9-227. "Whether an organization is tax-exempt under Section 501(c)(3) is a factor we consider, but it is not the only factor that the Company considers when seeking cost recovery

for those donations in rates pursuant to Section 9-227 of the Act." (Ameren Ex. 26.0 (Rev.), pp. 5-6, lines 103-105.) Thus, "[t]here is no internal policy that prohibits AIC from seeking costs recovery in delivery rates of these donations" to these development groups. (Id., p. 6, lines 109-10.) Staff's baseless accusation—an accusation that should not have been repeated on brief—should be ignored.

Ironically, Staff believes donations to non-Section 501(c)(3) groups can be recovered under Section 9-227's other prong as donations "for charitable scientific, religious or education purposes." (Tr. 487-89.) Donations to public schools and local governments, which do not qualify for tax-exempt status under Section 501(c)(3), are one example of donations that Staff admits could be recoverable as "educational." (Id.) So even though the word "charitable" appears in that part of Section 9-227, Staff does not impose the same narrow reading that "educational" donations must be tax-deductible donations to "charitable" Section 501(c)(3) organizations. Moreover, Staff ignores that AIC identified donations to these development groups as both for the public welfare and educational. (Ameren Ex. 16.0, p. 6.) These facts show that Staff's warped construction of Section 9-227 is more of an exercise in getting contributions to these groups disallowed, than an exercise in proper statutory interpretation.

This Commission should not allow Staff's latest attempt to disallow these donations to diminish the justification for allowing ComEd to recover these costs in formula rates. Donations to these non-profit groups do in fact "contribute to the general good of the public." Even Staff concedes this is possible. (Tr. 491-92.) Attracting new industry to communities in AIC's service territory, creating new jobs, assisting employers to expand operations, promoting local tourism – these are activities that benefit the general public. (AIC Init. Br. 45.) The Commission should continue on the current path and allow donations to these groups to be recovered.

2. Account 909 – Advertising Expense

The PUA expressly allows utilities to recover certain categories of advertising expenses in proceedings for general rate increases. 220 ILCS 5/9-225(3). They include: advertising on energy conservation, peak demand, service interruptions, energy efficiency, information on business locations and hours, and advertising required by law or regulation. Id. In addition, Part 295.30(g) of the Commission's administrative rules specifically allows "advertising regarding customer service which directly relates to the utility service received by the customer, identifies company employees and their functions, explains the company's terms and conditions of service." The PUA requires AIC to make available to the Commission "[c]opies of all advertisements and scripts included in the operating expense, listing the production costs for each ad, the publication schedule and costs for each ad." 220 ILCS 5/9-226(a).

The PUA also provides the Commission "shall not consider," when determining any rate or charge in a general rate case proceeding, "any direct or indirect expenditures for promotional, political, institutional or goodwill advertising" "unless . . . in the best interest of the Consumer" or authorized for recovery under Section 9-225(3). 220 ILCS 5/9-225(2). "Promotional" and "Goodwill or institutional" advertising, however, are narrowly defined by the Act. "Promotional advertising" is advertising "for the purpose of encouraging any person to select or use the service or additional service of a utility or the selection or installation of any appliance or equipment designed to use such utility's service." 220 ILCS 5/9-225(1)(c). "Goodwill or institutional advertising" is advertising "either on a local or national basis designed primarily to bring the utility's name before the general public in such a way as to improve the image of the utility or to promote controversial issues for the utility or the industry." 220 ILCS 5/9-225(1)(d). "Other" categories of advertising expenses that are not "political, promotional, institutional, or goodwill advertisements" are expressly recoverable under the Act. 220 ILCS 5/9-225(3)(i).

Staff's Initial Brief proposes separate disallowances for three specific categories of advertising costs that AIC incurred in 2010 in connection with the AIC merger: (i) costs related to replacing signage, vehicle magnets, and artwork ($5000); (ii) brand-related expenses to examine and improve on communications with customers ($431,000); and (iii) costs for restocking the online employee e-store with AIC merchandize ($95,000). CUB and AG/AARP join Staff in its opposition to AIC's recovery of brand-related and e-store costs. In addition, Staff proposes an "allowable" adjustment that effectively disallows additional expenses charged to Account 909 ($849,000) without identifying any specific objectionable advertisement and without taking into account the documentation AIC provided to support the expenses charged to this account. The Company's Initial Brief explains why the advertising expenses related to the three specific items are recoverable expenses and not "institutional advertising," as Staff, AG/AARP and CUB insist. (AIC Init. Br. 46-50.) The Company's Initial Brief also explains why AIC adequately supported the expenses charged to Account 909, contrary to Staff's claim. As explained further below, all four proposed adjustments to Account 909 should be rejected.

(a) Signage Costs

The Company's Initial Brief details why the "signage costs" proposed for disallowance by Staff are recoverable. (AIC Init. Br. 46-47.) The replacement of a lobby sign and vehicle magnets to reflect the AIC name post-merger and the placement of Kids Act on Energy artwork on billboards are not "institutional" or "promotional" advertising to encourage consumers to select AIC as their provider, improve AIC's image or lobby for an industry issue. Staff claims the signage costs represent "no allowable advertising delineated in Section 9-225 of the Act." (Staff Init. Br. 19.) But these are typical advertising expenses that always should be recovered in rates. The lobby sign and magnets were replaced so that AIC could properly identify the utility and its employees and contractors to consumers. The artwork was erected to provide consumers

with messages about energy efficiency and safety. These expenses benefit consumers, not AIC.

Staff doesn't believe it is "reasonable" to ask ratepayers to pay for costs to update signs and magnets with the new AIC name and logo. (Tr. 496.) And Staff doesn't believe it is "important" for customers to identify the former legacy utilities by the new AIC name. (Tr. 497.) But properly identifying the offices and employee/contractor vehicles with the actual legal name of new operating company is a basic expense for any business. Staff's refusal to agree that it is not "prudent" to incur these expenses to update signage is simply not credible. (Tr. 496.) The absurdity of Staff's position is evident in its admission that it would not even consider the cost of replacing signage for wear and tear to be a reasonable, prudent and recoverable expense.

Q. If the sign was damaged or had to be replaced for wear and tear, would you consider that a reasonable and prudent operating expense to replace the sign?

A. Which sign?

Q. The lobby sign.

A. Probably not.

Q. So if the sign had to be replaced for wear and tear, you would also disallow that expense in rates under this particular section of the Public Utilities Act?

A. Yes.

(Tr. 498, lines 5-16 (cross-examination of Staff witness Mr. Tolsdorf).) Any statutory interpretation that prevents a utility from recovering the costs of replacement signage, even in instances of wear and tear, is untenable. Accordingly, the Commission should reject Staff's argument that these signage coats are not "allowable" operating expenses under the Act.

Staff's other argument, namely that the signage costs represent "a duplicative expense resulting from the Company's decision to merge its legacy utilities" is just as unsound. (Staff Init. Br. 19; see also Ameren Cross Exs. 12, 13 & 14 (AIC-Staff 6.11, 6.13-6.14); Tr. 501-02.)

Staff claims it is "inappropriate to cause ratepayers to pay for an expense twice simply because the Company decided to change its name." (Tr. 496.) But as a legal matter, Staff agreed—and the Commission found—that the cost savings produced by the merger of the legacy utilities exceeded the associated costs. Ameren Illinois Co. Docket 11-0282, (Order, Jan. 10, 2012), pp. 8, 33-34. Thus, the Commission already decided, as a general matter, that the PUA allows AIC to recover costs incurred as a result of the merger. 220 ILCS 5/16-111(l). Staff witness Mr. Tolsdorf admitted upon cross-examination that he had not reviewed the relevant section of the PUA, the Commission's order in Docket No. 11-0282, or the Staff's testimony in that docket approving AIC's recovery of merger costs. (Tr. 502-03.) Accordingly, the Commission should reject Staff's claim that these signage costs are "duplicative" merger costs that should not be recovered in rates.

(b) Brand Related Expenses

The Company's Initial Brief also details why "brand related" expenses AIC incurred in examining the effectiveness of its customer communications are recoverable. (AIC Init. Br. 47-49.) With the merger of the legacy utilities in 2010, AIC sought to study its customers' perception of their service provider. The point of this exercise was to determine how AIC could improve on instances of confusion in the media and with consumers that had been prevalent in the past, as the Company moved forward as a single operating company. (Id. 48.) This was not market research to improve AIC's image or promote AIC's brand. And it was not an issue that could be addressed in the usual customer contacts. It was a coordinated effort to identify what customers deemed most important and tailor AIC communications accordingly with clarity and consistency.

Staff balks at the recovery of costs it claims are to "assess the customers' recognition of the Company's name." (Staff Init. Br. 19.) Staff claims funds spent on "name recognition and

market intelligence gathering do not benefit ratepayers in any way." (Id.) But the Staff witness supporting this disallowance, Mr. Tolsdorf, readily admits he has "not done any research on the value of name recognition." (Tr. 498.) The basis for his opinion that customers do not consider the identity of their utility important is just his "personal opinion." (Tr. 505.) He doesn't care about the identity of his provider. (Tr. 506.) Thus, he thinks AIC's customers "probably don't care" about the identity of their provider. (Tr. 505.) "Personal opinion" though is an insufficient basis for a cost disallowance. It must be grounded in some fact. In this instance, Staff's opinion that "name recognition" expenses do not benefit ratepayers is pure speculation.

Staff, AG/AARP and CUB label these "brand" expenses "promotional" and "goodwill" advertising that are not "allowable" expenses under the Act. (Staff Init. Br. 19; AG/AARP Init. Br. 52; CUB Init. Br. 27.) AG/AARP goes so far as to call AIC's communications efforts a "patently obvious attempt at goodwill advertising and brand name puffery." (AG/AARP Init. Br. 54.) But this is nothing more than playground name-calling. The terms "promotional," "goodwill," and "institutional" are buzzwords loosely thrown around without support. No party has shown how these expenditures improved AIC's image. No party has shown how they promoted AIC's services. No party has shown how they lobbied consumers on an industry issue.

Proponents of the disallowance claim the expenses were not necessary for the provision of utility service. But AIC explained why these funds were expended. There were prior instances of media and customer confusion over the identity of service providers. There was a merger of the legacy utilities. There was a corporate name change. These are undisputed facts. This was the time to revisit customer communications, determine what is important to consumers, and revamp messages accordingly to ensure AIC can effectively reach its customers. AG claims these additional funds were not necessary to address customer confusion. (AG/AARP Br. 53.)

But AG has not identified how else AIC might have addressed this problem, or how AIC's existing customer contacts (e.g., bill inserts, signage, websites, call centers) were sufficient to address the problem in the absence of this concerted effort.

Staff, AG/AARP and CUB claim these expenses are the type of branding expenses the Commission has previously disallowed. (Staff Init. Br. 19; AG/AARP Init. Br. 53; CUB Init. Br. 27.) Their authority is a single Commission decision, the final order in a Northern Illinois Gas Company (Nicor) case, ICC Docket No. 04-0779. But unlike the decision, AIC has demonstrated why the "branding" expenditures were necessary and how the customer would benefit from AIC revamping its customer communications. And unlike that decision, no party has shown how AIC's affiliates have benefited from these expenditures. Indeed, Staff admits that it does not have the opinion that these "branding" dollars helped AIC's unregulated affiliates. (Tr. 507.) The two bases for the Commission's disallowance in Docket No. 04-0779 are not apparent here.

In prior AIC rate orders, the Commission has emphasized the value of having uniform charges and tariffs among the legacy utilities. The message from the Commission in this regard has been clear: AIC customers benefit from consistent and best practices across the former legacy service territories. Ameren Illinois Co., Order, Docket 11-0282 (Jan. 10, 2012), pp. 136-39; Docket 09-0306 (cons.) (Apr. 29, 2010), pp. 228, 283; Order, Docket N07-0585 (cons.) (Sept. 24, 2008), p. 280; Order, Docket 06-0070 (cons.) (Nov. 21, 2006), p. 149. These "branding" expenditures help to fulfill that goal—that AIC interacts with customers in a consistent and clear manner. Staff agrees advertising dollars concerning consumer education can be an allowable advertising expense. (Tr. 504.) That is all this communications effort was: recoverable customer education expenses. Staff, AG/AARP and CUB's disallowance should be rejected.

(c) E-store Costs

The online Ameren "e-store" is a standard service provided by other large companies where employees can easily purchase corporate branded items. (Ameren Ex. 16.0, p. 22.) Proponents of the disallowance claim the e-store is not necessary for the provision of safe, reliable utility service. The same senseless argument could be made about the expenses AIC incurs in providing other standard services. But, as explained in the Company's Initial Brief, the e-store is more than just another typical business expense or company "perk" for employees to foster workplace pride and promote morale. (AIC Init. Br. 49-50.) The e-store inventory provides a source of branded merchandise to use for recognition awards and Company sponsored events. Rewarding employees with AIC merchandise, using AIC merchandise for Company events, and allowing AIC employees a medium for purchasing these products are justifiable operating expenses. These are not expenses incurred in improving AIC's image. These are expenses incurred in improving AIC's workplace and the quality of its customer contacts. Staff, AG/AARP and CUB's disallowance should be rejected.[4]

(d) Other Account 909 Expenses

For this initial formula rate filing and subsequent filings to update the rate's cost inputs, as was the case for general rate cases, there is a review period for Staff to examine the prudence and reasonableness of a utility's costs. That period allows for the free exchange of information to assist Staff in its review. The point of this process is so that the sources for the costs incurred in the relevant period are transparent and supported. In turn, if specific costs are objectionable, the parties can debate the merits of passing along those costs to ratepayers. In this proceeding,

[4] CUB alleges it is "possible" Ameren is seeking double-recovery for e-store expenses because Ameren witness Mr. Stan Ogden did not know how purchases were recorded and reflected in the revenue requirement. (CUB Br. 28.) CUB's speculation about what may be "possible" is just that: speculation. CUB had an opportunity to build a record on its theory prior to the hearing. It did not. Asking accounting questions at the hearing to a non-accountant witness that are outside the scope of his personal knowledge does not demonstrate anything other than he did not know.

AIC presented the parties with a detailed breakdown by subject matter area of the electric expenses included in the FERC Form 1 data for Account 909, with invoiced and non-invoiced amounts. After their review of the documentation of AIC's advertising costs and invoice support, Staff, AG/AARP and CUB identified three specific objectionable expenses.

Staff's "allowable" adjustment to Account 909, however, short-circuits that process. As explained in the Company's Initial Brief, Staff's "allowable" adjustment effectively disallows *additional* expenses *without* identifying any specific objectionable advertisement and without taking into account the documentation AIC provided to support the expenses charged to this account. (AIC Init. Br. 50-52.) The end result of this "allowable" adjustment is a proposed disallowance ($849,000) that far exceeds the sum of Staff's other proposed disallowances for advertising costs. Neither CUB nor AG/AARP manufacture a similar "allowable" adjustment. They simply seek to disallow the specific objectionable expense, as one should.

Staff claims the additional costs "could not be verified" and AIC has failed to meet its "burden of proof" because it did not reconcile each vendor invoice it provided with the subject matter expense listed in the detailed cost worksheet (Ameren Ex. 26.1). (Staff Init. Br. 21.) The PUA and Commission's rules, however require no such showing. AIC's response to ST 2.07R (Ameren Ex. 26.1) identified, in painstaking detail, the various advertising programs and electric charges that were included in the formula rate revenue requirement for Account 909. The record shows AIC identified and supported "the costs for each ad" included in operating expense. Indeed, the record shows AIC identified the sources for all advertising related charges booked to this account, including non-invoiced amounts. There are no grounds for Staff's unprecedented punitive adjustment. The Commission should not penalize AIC by approving Staff's further disallowance to Account 909 that is not tied to a particular objectionable ad.

3. Account 930.1 – Corporate Sponsorship

All parties agree AIC's sponsorship of local community events is "admirable." (CUB Init. Br. 28; ICC Staff Ex. 15.0, p. 15.) No party disputes the reasonableness of any amount spent on an event. No party questions the value of an event. No party calls for AIC to cease its sponsorship of an event. All in all, AIC's giving back to the communities in its service territory is lauded. But even though everyone agrees AIC's support of local events "demonstrate[s] good corporate citizenship," (ICC Staff Ex. 6.0, p. 10), Staff, AG/AARP and CUB seek to remove the costs of being "good corporate citizen" from formula rates.[5] They apparently do not take issue with AIC incurring these costs. They just don't want AIC to recover these operating expenses in rates.

As AIC explained in its Initial Brief (AIC Init. Br. 52-55), the costs AIC incurs in sponsoring local events in its service territory are reasonable *and* recoverable operating expenses. Corporate funds provide financial support—indeed, can be the lifeblood—for worthwhile community events. They can provide an opportunity for AIC employees to volunteer their time on important causes. They can provide a venue for AIC to better inform and educate its customers on issues concerning energy conservation, supplier choice, energy efficiency, and safety measures. No one can argue that communities in AIC's service territory are not better off by virtue of the events AIC sponsors. CUB claims that AIC has failed to demonstrate that these funds provide ratepayer benefit. (CUB Init. Br. 28.) This is not true. One only needs to review a handful of the events (see AIC Init. Br. 54) to realize that these funds create value for the rate paying public. The events, the opportunities they present, the interactions with consumers—all benefit AIC's customers.

[5] Although Staff proposes the removal of corporate sponsorship costs from rates, Staff recommends AIC recover a portion of expenses charged to Account 930.1 (48,000). (Staff Ex. 15.0, Schedule 15.02, Page 1 of 3, Line 4.)

Staff, AG/AARP and CUB claim sponsorship costs are "goodwill" advertising expenses that are not recoverable in rates. But these funds do not meet the narrow definition of "goodwill" or "institutional" advertising set forth in Section 9-225 of the PUA by the General Assembly. AIC's sponsorships of local community events simply are not "designed primarily to bring the utility's name before the general public in such a way as to improve the image of the utility or to promote controversial issues for the utility or industry." 220 ILCS 5/9-225(1)(d). These events improve the image of the communities, not the sponsors. These events promote causes for the communities, not the sponsors. These funds are not "designed primarily to bring [AIC's] name before the general public"; they are designed to bring the events to the general public. AIC doesn't give money to Special Olympics to improve its image. And it doesn't give money to local festivals to promote the utility. These are not the type of advertisements that concerned the General Assembly. And these are not the type of advertisements that should be disallowed.

Staff claims the funds "put the Company's name in a good light in their communities." (Staff Init. Br. 21.) Maybe so. But whether AIC is praised for its sponsorships is not the standard for whether advertising expenses should be disallowed. The standard is whether the expense is designed primarily to improve the image of AIC, or lobby for an industry issue. Case in point, AIC gave $5000 to the Heart of Illinois Fair in Peoria in 2010 to provide for a cooling station. (Ameren Ex. 26.0 (Rev.), p. 23.) That expenditure was not designed to improve the image of AIC or lobby for an industry issue. It was designed to allow the elderly and others to escape the summer heat at the fair. It was an expenditure made for the benefit of the fair's participants, not for the benefit of AIC. That AIC may receive public recognition because of these sponsorships does not mean that costs of being a good corporate citizen should be

categorically excluded per se. [6]

As stated in the Company's Initial Brief, no party opposing recovery of AIC's corporate sponsorship costs identified a prior Commission opinion that has disallowed these funds. Nor did any party seek to exclude particular sponsorships as not providing any ratepayer benefit. Instead, Staff, AG/AARP and CUB ask the Commission to gut the remainder of Account 930.1—beyond the substantial disallowance AIC has already made for athletic sponsorships—and find that corporate sponsorships are not recoverable A&G expenses. The Commission should not take their invitation to throw the baby out with the bathwater. The costs of being a good corporate citizen are not per se disallowable advertising expense as a matter of law, and should be recoverable advertising expense as a matter of policy. The Commission should reject Staff, AG/AARP and CUB's adjustment to disallow the remainder of Account 930.1 expenses.

4. Regulatory Asset Amortization

AIC, Staff and AG/AARP all agree that Section 16-108.5(c)(4)(G) of the EIMA permits "recovery of existing regulatory assets over the periods previously authorized by the Commission." (AIC Init. Br. 56; Staff Init. Br. 22; AG/AARP Init. Br. 56; 220 ILCS 5/16-108.5(c)(4)(G).) The dispute between AIC and AG/AARP boils down to the application of this section to certain revised amortization periods in the Commission's Order in Docket No. 09-0306.

AIC's FERC form 1 reflects AIC's actual 2010 amortization expense. (AIC Init. Br. 56.) With respect to severance and Docket No. 04-0294 merger integration cost amortization, the facts are these: (i) AIC began amortizing severance costs as authorized in May 2010; (ii) AIC amortized merger integration costs at the level approved in Docket No. 04-0294 from January

[6] AG/AARP complains AIC included "sponsorship costs for various athletic events" in the revenue requirement. (AG/AARP Init. Br. 55.) AIC, however, excluded sponsorship costs for professional athletic events for which it received tickets. (Ameren Exs. 13.2, Workpaper 7, p. 48 of 55; 16.0, p. 24; 26.0 (Rev.), p. 22.)

through April 2010; (iii) AIC adjusted its integration cost amortization as of May 2010 as authorized in Docket No. 09-0306 (cons.) (thus the monthly amounts changed for May through December 2010). These are the amounts and periods "previously authorized by the Commission" which AIC has reported in its 2010 FERC Form 1.

AG/AARP argues the amortization expense should reflect the same monthly amount of amortization expense for these two items for all twelve months of 2010, as if the monthly amount of amortization that resulted from the 2009 rate case had been in effect throughout 2010. (AG/AARP Init. Br. 56-58.) This is not consistent with 16-108.5(c)(4)(G) or the EIMA's requirement that AIC's formula rates be based on actual costs as set forth in FERC Form 1. (See AG Init. Br. 57; Ameren Ex. 13.0, p. 32; 220 ILCS 5/16-108.5(c)(4)(G).) AG/AARP's proposal effectively reads into the Commission's Order a requirement that the revised amortization of both regulatory assets apply retroactively. This is inappropriate. In its 2009 rate case, the Commission authorized AIC to *begin* amortizing severance costs, over three years. Ameren Illinois Co., Order, Docket 09-0306 (cons.) (Apr. 29, 2010), p. 106. The Commission also authorized AIC to amortize the remaining balance of the integrated costs regulatory asset, *calculated as of May 2010*, over two years. Id., p. 100 (emphasis added.) The change in actual monthly amortization amounts mid 2010 is reflected in the 2010 FERC Form 1. (AIC Init. Br. 57.)

In addition, AG/AARP's indignant arguments that AIC would have the Commission ignore its previous findings or that the recorded amounts are "inaccurate" or "inconsistent" with the 2009 order, are quite simply wrong. (AG/AARP Init. Br. 58.) AG/AARP's proposal ignores that the changes authorized by the 2009 order began in May 2010 and were reflected as such in FERC Form 1. (AG/AARP Init. Br. 58.) Thus, it is AG's own proposal that is inconsistent with

the Commission's 2009 Order, and should therefore, be rejected.

Moreover, as AIC and Staff explained in their initial briefs, it is not necessary to annualize or normalize the amortization expense because formula rates will be set for each year, and the actual cost recovery of these amounts will not give rise to under- or over-recovery of these expenses. (AIC Init. Br. 57; Staff Init. Br. 23.) Rather, formula rates are intended to be set based on actual expense. (AIC Init. Br. 58.) For these reasons, and the reasons set forth in AIC's Initial Brief, the Commission should approve AIC's proposed regulatory asset amortization.

5. Other

IV. REVENUES

A. Uncontested or Resolved Issues

B. Contested Issues

1. Late Payment Revenues

As AIC explained in its Initial Brief (p. 59), the Commission's long-standing practice for AIC, in rate orders dating back at least to the unbundling of electric service rates in Docket No. 06-0070 (cons.), has been to include in the electric DS cost of service *only* electric distribution system costs recovered through electric delivery service base rates. "Other revenues" assigned or allocated to DS service have been consistently used to offset the DS revenue requirement. Revenues and costs associated with functions other than delivery service, such as power supply and transmission, are accounted for through separate tariffs submitted to, approved by, and subject to, this Commission's jurisdiction. (Ameren Ex. 13.0, pp. 28-29.)

Neither AG/AARP nor CUB provide any sound reason for the Commission to deviate from its prior ratemaking treatment of late payment revenues. Although AIC's 41.89% allocation factor is derided as "arbitrary" (AG/AARP Init. Br. 62), no party has introduced

evidence rebutting the fact that this is the percentage of late payment revenues paid by DS customers. The claim, without record support, that "These amounts are paid entirely by retail ratepayers pursuant to ICC rules and Ameren's Illinois tariff" (id.) misleadingly suggests that all late payment revenues are derived from DS tariffs, but this simply is not true. AIC's allocation factor credits DS customers with the proportion of late payment revenues they pay—no more and no less. If any proposal is "arbitrary," it is AG/AARP and CUB's proposal to credit DS customers with 100% of late payment revenues when less than 42% of these revenues are attributable to DS rates.

V. RATE OF RETURN

A. Overview

B. Uncontested or Resolved Issues

1. Rate of Return on Common Equity

C. Contested Issues

1. Year End or Average Capital Structure

As discussed in the introduction to this Reply Brief, the General Assembly has clarified its intent in adopting the formula rate law, and has clearly indicated that it intended for the Commission to use a year-end capital structure when setting formula rates. This should put the issue to rest.

However, in the event that the Commission determines that the use of an average capital structure is somehow consistent with the General Assembly's stated intent, the Commission should not use the monthly average of capital balances that the Staff has proposed. Rather, as Mr. Stafford explained in this proceeding, the Commission should use an average of beginning and year-end balances for the subject period. (Ameren Ex. 33.0, pp. 3-4.) Staff's proposal to use a 12 month average for capital structure is inconsistent with, and develops capital structure on a

different basis than, its proposal for rate base calculation, for which Staff is proposing a simple average of beginning and end of year balances. (Id.) Moreover, Staff's monthly average proposal relies on a set of data inputs that are not found in FERC Form 1 and that do not provide rate transparency—one of the principal goals of the formula rate law. (Id.)

2. CWIP Accruing AFUDC Adjustment

3. Common Equity Balance –Purchase Accounting

Staff's arguments in its brief fail to offer compelling justification for a wholesale abandonment of the approved purchase accounting recognized by the Commission since 2004. Staff simply does not offer any logical support for a departure from the established accounting approved for "all regulatory purposes" since Docket No. 04-0294, and subsequently applied in rate cases, including the Commission's recent rate order in 11-0282. (AIC Init. Br. 65-6; Illinois Power Co., Order, Docket 04-0294 (Sept. 22, 2004), pp. 33-4; Ameren Illinois Co., Order, Docket 11-0282 (Jan. 10, 2012), pp. 53-4).

The Company's position is straight forward; the Commission should continue to establish a capital structure for AIC by eliminating *all* effects of Illinois Power related purchase accounting. The Commission should continue to honor the accounting it approved based upon Staff's recommendation at the time of the acquisition of Illinois Power Company from Dynegy by Ameren Corporation in Docket No. 04-0294. (See AIC Init. Br. 65.) In doing so, the Commission's order in this docket will be consistent with the manner in which the capital structure was calculated in prior rate cases, and expressly approved in the last completed AIC gas rate case. (See Id., p. 66; Ameren Ex. 13.0, pp. 11-12) Adherence to prior treatment will render a decision consistent with "Commission practice" in establishing a capital structure for the purpose of formulaic rates pursuant to 220 ILCS 5/16-108.5(c)(2).

As stated on page 27 of Staff's Initial Brief, Staff presents a calculation that in effect

reverses the collapsing of all purchase accounting into Account 114. Staff asserts that "purchase accounting adjustments" are not appropriate for ratemaking because they do not correspond to investment in plant and service. (Staff Init. Br. 28.) Herein appears to be the source of Staff's confusion, which is largely semantic. As acknowledged by Ms. Phipps at hearing, "purchase accounting" is a reference to the effects of push down accounting on Illinois Power Company's books at the time of acquisition. (Tr. 389.) The *adjustments* associated with purchase accounting are regulatory accounting adjustments and are for the purpose of removing purchase accounting from company's books. (Tr. 390.) These adjustments are necessary because the Commission sets rates based upon the book value of plant in service, and purchase accounting would dictate restated accounting based upon fair market values at the time of acquisition rather than book. (Tr. 391-92; See AIC Init. Br. 65; Ameren Ex. 23.0, pp. 6-7.) The methodology for calculating the adjustments involves the collapsing of all purchase accounting into account 114, which contains the goodwill balance. (Tr. 391; Ameren Exs. 13.0, pp. 11-12; 23.0, pp. 6-7.) This methodology directly follows the Commission's decision in Docket No. 04-0294. Illinois Power Co., Order, Docket 04-0294, pp. 33-34. Staff's argument essentially asks the Commission to abandon its previously approved regulatory accounting. However, Staff does not articulate a sound rationale for doing do. Just as the Staff proposed and Ameren Corporation agreed in 2004, the Commission should continue to remove *all* effects of purchase accounting for regulatory purposes and do so by collapsing all entries necessary to reverse the effects of purchase accounting against goodwill in Account 114.

In furtherance of its position, Staff continues to argue that the lines of common equity are permeable and also makes several tangential and inaccurate arguments concerning the nature of cash and dividends. (Staff Init. Br. 29.) AIC has thoroughly rebutted this position and will not

reiterate its arguments again on Reply. (AIC Init. Br. 67-71.) Staff also raises additional arguments concerning a "quasi-reorganization" of Illinois Power in 1999 and quotes a section of a Form 10-k from that period. (Staff Init. Br. 29.) No citation supports this quotation and no such document was admitted into evidence. The only reference in testimony appears to be a footnote to Staff Rebuttal testimony. Further, it is not clear what type of transaction a "quasi-reorganization" is, nor how such event has any bearing on the issue before the Commission in this proceeding. AIC has shown through record evidence that the components of equity are not "permeable" and that no "transfer" between retained earnings and paid in capital has occurred. (Ameren Ex. 24.0, pp. 5-7; AIC Init. Br. 67-71.)

During the proceeding, Staff made it clear that it was not challenging the calculation of the purchase accounting adjustments made by the Company. (Tr. 387; ICC Staff Ex. 16.0, p. 16.) Despite this unequivocal statement, on p. 30 of Staff's Initial Brief, Staff presents accounting arguments not previously stated in Staff testimony, specifically questioning how Mr. Stafford calculated the adjustments in 2007 and 2008. It is inimical to this process to present novel theories and claims at the time of briefing after having expressly stated in testimony the matter was not being challenged. Such a tactic denies the Company the ability to be apprised of the nature of position against its interest, conduct discovery, and respond accordingly.

Aside from these infirmities, Mr. Stafford, a CPA and expert in regulatory accounting, has thoroughly explained at hearing and in testimony his methodology for calculating the impact of dividends paid in 2007 and 2008 upon retained earnings balances that resulted from purchase accounting for Form 21 ILCC and ratemaking purposes. (Tr. 284-88; Ameren Ex. 13.4) As a practical matter, given that several years have now passed, the matter is largely of historical concern as the capital structure of the Company is by no means static and has been through

several business cycles affecting retained earnings.

Additionally, confusion on Staff's part is demonstrable by its claim that financial accounting standards (FASB standards) do not support the Company's removal of purchase accounting for ratemaking purposes. (See Staff Init. Br. 30.) The removal of purchase accounting pursuant to Docket No. 04-0294 is for regulatory purposes, not prior financial accounting or reporting. In fact, the reason purchase accounting requires adjustment for regulatory purposes is due financial accounting standards applicable at the time of Illinois Power's acquisition. (Tr. 391.) Staff's reference to the Commission's uniform standards of accounts is correct in that such standards do not address purchase accounting adjustments, which is precisely why the Commission addressed the issue at the time of acquisition and directed that all effects of purchase accounting be eliminated and collapsed together in uniform Account 114.

At hearing, Staff admitted that dividends paid reduce retained earnings and common equity. Further, Staff admitted that dividends paid reduce the common equity balance. (Tr. 397-98.) Therefore, taken to its logical end, Staff is arguing that the equity reduced by dividend payments in 2007 and 2008 now justifies another reduction today for the purpose of setting prospective rates. The argument calls for the untenable effect of a double reduction of equity as a result of dividends paid from historic retained earnings balances.

Staff also presents an argument in brief that takes umbrage with the Company's assertion that it is illegal to pay dividends when the result is negative retained earnings. Specifically, Staff notes that in special circumstances the Commission can permit such an action. (Staff Init. Br. 31.) This argument ignores the salient point that dividends are paid from retained earnings. The point is clearly supported by the fact that dividends are recorded as a reduction to retained earnings and, barring extraordinary circumstances, dividends cannot legally be paid if there is not a

positive retained earnings balance. (See AIC Init. Br. 70-71.) By virtue of this fact, retained earnings generated by purchase accounting require adjustment only until such time as the balance is eliminated from common equity through payment of dividends.

Through the course of the last completed rate case, and in this docket, Staff has presented several variations of its adjustment and supporting rationale. (Tr. 386-88.) In all cases, Staff takes issue with the purchase accounting adjustments other than goodwill, disagreeing that the capital structure should reflect a reduction of equity equal to goodwill net of all other purchase accounting. The effect of Staff's proposal remains the same, a reversal of purchase accounting adjustments other than goodwill and a corresponding increase in the reduction to common equity. The relevant point remains that the Commission ordered that all purchase accounting be reversed for "all regulatory purposes." Illinois Power Co., Order, Docket 04-0294, pp. 33-34. By ordering the collapsing of all purchase accounting, goodwill and other purchase accounting are intertwined. Ameren Illinois Co., Order, Docket 11-0282 (Jan. 10, 2012), pp. 53-54. The Company proposes the same methodology in the present case, a process that has been used to calculate capital structure in previous AIC rate cases, including the last completed case.

The Commission should not depart from its Order issued in Docket No. 11-0282, and should reach the same conclusion in this docket, sustaining the Company's removal of Illinois Power goodwill net of all purchase accounting for the purpose of establishing capital structure. Staff's adjustment to reverse the netting or collapsing of purchase accounting adjustments should be rejected. The accounting in Docket No. 04-0294 should stand for all regulatory purposes, and the calculation of capital structure should remain cognizant of this Commission practice in setting formulaic rates pursuant to 220 ILCS 5/16-108.5.

4. Subsequent Discussions/Report on Capital Structure

IIEC says it agrees with Staff's proposal regarding meetings between the Company and

Staff regarding AIC's capital structure, except that IIEC wants to turn this into an undefined "investigation" in which "all parties" may participate—by which, AIC concludes, IIEC does not support Staff's proposal at all, but instead seeks some different type of process put in place.

It is simply too late in the day to make undefined proposals. IIEC had an opportunity to define a proposed process earlier in this case. Now is not the time for vagueness and half-measures. The Company has agreed to Staff's proposal, and no one made a differing proposal. IIEC's effort to transform Staff's proposal into something else more formal and broader in scope by casual use of the word "investigation" should be rejected. There is a schedule for testimony for a reason, and it is to develop a full record. Eleventh-hour legerdemain in a brief is no substitute for a proper evidentiary presentation.

5. Common Equity Ratio/Cap Limit

Staff argues that approval of the Company's proposed capital structure would violate Section 9-230 of the Illinois Public Utilities Act because AIC's common equity ratio exceeds that of Ameren Corporation. Staff's reliance on Section 9-230 is misplaced, and Staff does not demonstrate how AIC's proposed capital structure would violate that provision.

Section 9-230 provides:

> In determining a reasonable rate of return upon investment for any public utility in any proceeding to establish rates or charges, the Commission shall not include any (i) incremental risk, (ii) increased cost of capital, or (iii) after May 31, 2003, revenue or expense attribute to telephone directory operations, *which is the direct or indirect result of the public utility's affiliation with unregulated or nonutility companies*.

220 ILCS 5/9-230 (emphasis added).

Section 9-230 is a limited provision, by its express terms. It addresses only the "incremental risk" or "increased cost of capital" that a public utility experiences because of its "affiliation" with "unregulated or nonutility companies." Thus, Section 9-230 addresses

situations in which the relatively risky operations of affiliates spill over into the utility's cost of capital and cause the utility to pay more for debt or equity. In other words, the Commission should set the utility's cost of capital as if it were not affiliated with riskier entities.

Staff makes no such showing. Staff does not and cannot connect the dots in a way that would show that if AIC were a stand-alone company, it would have a lower cost of capital. Instead, Staff just points to two dots—AIC's common equity ratio and Ameren Corporation's common equity ratio—and contends that a violation of Section 9-230 is present. Staff never explains how.

Moreover, Staff's own brief undercuts its argument. Staff disparages AIC's contention that the Illinois regulatory framework has required a significant increase in AIC's common equity ratio, but even Staff acknowledges that there are "lingering concerns about the regulatory framework" that the formula rate process has not fully offset. (Staff Init. Br. 32-33.) Accordingly, while such concerns are still present, the Commission should not be making premature pronouncements about the Company's capital structure, and certainly should not do so based on a misapplication of Section 9-230 of the Act.

IIEC continues to flog its proposed common equity ratio cap. The Commission rejected IIEC's proposal in the ComEd docket, and it should do so here. There is no reason to set an arbitrary common equity target applicable for the next three years. As discussed in Section V.C.4, above, Staff has proposed a means of discussing use of greater leverage in AIC's capital structure, and AIC has agreed to this proposal. That seems a more appropriate measure than IIEC's utterly arbitrary and uninformed 50% cap.

6. Balance and Embedded Cost of Long-Term Debt

7. Balance and Embedded Cost of Preferred Stock

8. Cost of Short-Term Debt, including Cost of Credit Facilities

9. Other

VI. REVENUE REQUIREMENT[7]

VII. COST OF SERVICE AND RATE DESIGN

A. Resolved Issues

1. Standard of Review for Rate MAP-P Class Cost Allocation and Rate Design

2. ECOSS Class Cost Allocation

3. Class Revenue Allocation

4. Rate Design

5. Section 16-108.5(c)(4) Protocols - Weather Normalization and Common Costs

B. Contested Issues

VIII. FORMULA RATE TARIFF

A. Uncontested or Resolved Formula/Tariff/Filing Issues

1. Uncollectibles Expense – Reconciliation in Rider EUA

2. Interest Rate Formula for Reconciliation Computation

3. Miscellaneous Staff/AIC Agreed-Upon Tariff Language Changes

4. Period of Time for Filing Compliance Formula Tariff with ICC

B. Contested Formula/Tariff/Filing Issues

1. Incentive Compensation – Stated Level/Test of Reasonableness

In its Initial Brief, IIEC contends that due to the "sensitivity" of this expense, and the 45

[7] In preparing its Reply Brief, AIC determined that it had inadvertently excluded from its Initial Brief outline Section VI "Revenue Requirement". This caused the Section headers for Sections VI onward to be incorrect. Concurrent with the filing of its Reply Brief, AIC is filing a corrected Initial Brief in which the correct Section headers for Sections VI – IX are provided and internal cross references are corrected. No substantive changes are made in the Corrected Initial Brief and the Initial Brief's pagination remains the same.

day window for the Commission to instigate an investigation on a utility's annual rate filing, "it would be important for the Commission to advise the utility in advance of the *pre-determined* level of expense that would cause the Commission to conduct a hearing on the prudence and reasonableness of those expenses." (IIEC Init. Br. 58.) IIEC continues to ignore that Section 16-108.5(c) does not specify a dollar limit; instead it expressly allows a utility to recover *actual* costs. 220 ILCS 5/16-108.5(c)(1). As discussed in Section VIII.C.1, this is another example of IIEC's disregard of the fundamental principle that the Commission has only those powers granted to it by the legislature. That IIEC might wish that the expenses subject to formula rate review could be set at some arbitrary threshold, the EIMA does not provide for this. Instead, the General Assembly intended the formula rate process to "provide for the recovery of the utility's actual costs . . . " and that the actual cost data was to come from "the utility's most recently filed annual FERC Form 1." 220 ILCS 5/16-108.5(d)(1). Establishing an arbitrary presumption that expenditures in excess of certain levels is unreasonable and contrary to law. Staff agrees that IIEC's "trigger" amount reads into the statute an arbitrary amount of expense "presumed to be prudent and reasonable and forego[es] any analysis of the actual amount for the year." (Staff Init. Br. 48.)

Moreover, the Act states: "The sole fact that a cost differs from that incurred in a prior calendar year or that an investment is different from that made in a prior calendar year shall not imply the imprudence or unreasonableness of that cost or investment." 220 ILCS 5/16-108.5(c)(1). Thus, the General Assembly made clear it understood that expenses could vary from year to year, and that any variation did not imply an expense somehow became unreasonable simply because it changed, or rose above some arbitrary threshold. Therefore, IIEC's proposal is unreasonable, unnecessary and contrary to law and should be rejected.

2. Incentive Compensation – Metrics/Requirements

IIEC recommends the Commission prohibit AIC's recovery of incentive compensation expense unless AIC achieves the performance metrics established by Section 16-018.5(f) of the Act. (IIEC Init. Br. 58-59.) This recommendation is opposed by Staff (Staff Init. Br., p. 49) and should be rejected for the reasons provided in AIC's Initial Brief (pp. 85-86.) In particular, IIEC fails to recognize that Section 16-108.5(c)(4)(A) of the Act expressly designates metrics for which expense can be recovered: including "incentive compensation expense that is based on the achievement of operational metrics, *including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance*." 220 ILCS 5/16-108.5(c)(4)(A); cf. citation at IIEC Br., p. 59.

No provision is made in the statute for the trigger mechanism IIEC proposes. IIEC's proposal would instead potentially deny AIC the opportunity to recover the cost of other KPIs, such as those related to safety, despite their clear operational and customer benefits—for failure to meet unrelated statutory goals. AIC's incentive plans cover a far wider range of metrics (KPIs) than the metrics in Section 16-108.5(f) of the Act. A proposal to condition recovery of incentive compensation expense on achievement of the statutory metrics ignores AIC's broad range of KPIs and their customer benefits. Thus, this recommendation should be rejected.

3. Affiliate Service Charges – Stated Level/Test of Reasonableness

In its Initial Brief, IIEC clarified that it recommends the Commission impose a cap on affiliate service charges, limited to $124 million, which is the amount on AIC's 2010 FERC Form 1. (IIEC Init. Br. 59.) IIEC alleges these expenses will not receive regulatory scrutiny as in a traditional rate case, thus the proposed cap will ensure customers pay no more than a reasonable level for this expense. (Id., p. 60.) IIEC provides no new arguments which AIC has not already addressed in its Initial Brief; however, a few points are worth repeating. As AIC

explained in its Initial Brief, these expenses will receive regulatory oversight in the annual formula rate filing just as any other utility expense would. (AIC Init. Br. 82; See also 220 ILCS 5/16-108.5(d).) IIEC's proposal is at odds with the intent of the General Assembly that the formula rate *process* would "provide for the recovery of the utility's *actual* cost . . . " and that the actual cost data was to come from "the utility's most recently filed annual FERC Form 1." 220 ILCS 5/16-108.5(d). Staff concurs. (Staff Init. Br. 49-50.)

Furthermore, establishing an arbitrary, rebuttable presumption that expenditures in excess of certain levels are unreasonable establishes an incentive to focus solely on cost recovery—instead of what is reasonably necessary to provide safe and reliable utility service. (AIC Init. Br. 82.) Capping recovery of lawful and prudent expenses is not in the customers' best long-term interest (or consistent with the EIMA). (Id., p. 83.) Denying recovery of lawful expenses can, in fact, lead to very negative outcomes such as weakened credit ratings and increased costs of financing. (Id.) Ultimately, the customers will pay the increased financing costs. (Id.) For these reasons, and those set forth in AIC's Initial Brief, the Commission should reject IIEC's recommendation.

4. Rate Case Expense – Stated Level/Test of Reasonableness

In its Initial Brief, IIEC admits that the formula rate process focuses on the recovery of actual costs. (IIEC Init. Br. 60.) However, IIEC takes a completely inconsistent position by recommending the Commission impose an arbitrary ceiling on rate case expense of $1 million, based on the annual amortized rate case expense incurred in AIC's last case. (Id., pp. 60-61.) IIEC argues a cap would encourage "aggressive management" of rate case expense. (Id., pp. 61.) IIEC also claims its proposed cap would "provide assurance of regulatory oversight" and help to ensure the prudence and reasonableness of the formula rate. (Id., p. 61.)

As with IIEC's proposed caps on incentive compensation expense and affiliate service

charges, AIC and Staff agree IIEC's proposed cap on rate case expense is not permitted under Illinois law. (AIC Init. Br. 87-88; Staff Init. Br. 50-52.) As discussed above, such caps are not consistent with the EIMA. Moreover, AIC and Staff agree that imposing any stated amount is directly contradictory to the legal mandate of Section 9-229 which requires the Commission to expressly address in its final order "the justness and reasonableness of any amount expended by a public utility to compensate attorneys or technical experts to prepare and litigate a general rate case filing." (AIC Init. Br. 87-88; Staff Init. Br. 51; 220 ILCS 5/9-229.) Thus, the Commission should reject IIEC's recommendation to impose an artificial cap on rate case expense.

5. Schedules to be Included in Rate MAP-P/Tariff Complexity

Staff repeats the arguments it makes as described in Ameren Illinois' Initial Brief on this topic. Staff references Mr. Mill's testimony, where he says if the formula schedules are not made part of the tariff, it's of little consequence to AIC. (Staff Init. Br. 54.) Mr. Mill's testimony is taken out of context. Obviously, the Company will have the formula schedules it needs in order to make the revenue requirement assessments and the other rate charge calculations. Mr. Mill's concern, and it is a concern that should be observed by the Commission, is that this information will not be readily available in the public or to those that are interested in this information. Mr. Mill testifies in his opinion, members of the energy community would benefit from having this information made available as part of the tariff. Whether a person chooses to review any of the formula schedules, that is a choice to be left to that person and should not be dictated by the whims of a few.

IIEC offers nothing of merit but, for the first time, makes claims or allegations not supported in the record. For example, IIEC argues the Company's proposal would hinder the Commission's exercise of its ratemaking authority. (IIEC Init. Br. 63.) But it is ludicrous to believe including the formulas would have any impact on the Commission's ratemaking authority.

As made abundantly clear in the record, the schedules, which are the formula approved by the Commission, serve to develop the revenue requirement and the other rate charges. All the inputs are approved by the Commission, not Ameren Illinois.

Similarly, IIEC claims there "might be limitations on the Commission's ability to modify cost inputs." (IIEC Init. Br. 63.) There is no factual basis in the record for this statement. It is speculative and dead wrong. With each formula rate case, the Commission will make the decisions by which to populate the formula rate values. There is no chance of limiting the Commission's authority. The Commission should completely disregard this portion of IIEC's position.

6. Filing of Final Approved Formula Template/Schedules with ICC

Staff proposes that the compliance version of Rate MAP-P only include Schedules FR A-1 and FR- A-1 REC, with all other formula rate sheets in Appendix A being excluded from the tariff. AIC disagrees with this proposal for the reasons discussed above and in its Initial Brief (pp. 53-54). However, AIC agrees that, if the other formula sheets are excluded, AIC should file on e-Docket with a copy to the Manager of Accounting of the Commission, the final template approved by the Commission (which consists of all schedules comprising the formula by the time rates resulting from this order are effective).

IIEC suggests that (IIEC Init Br. 66-67) the appendices Staff proposes to exclude need not be included as part of the "formula." This is incorrect—they are an integral part of the formula (see Ameren Ex. 1.0, pp. 16-18). To adopt IIEC's view would leave open the possibility that some portions of the formula could be changed. As Staff also points out, the Commission does not have the authority to approve any further changes to the formula adopted in this proceeding. As Section 16-108.5(d)(3) provides:

> The Commission shall not, however, have authority in a proceeding under this subsection (d) to consider or order any changes to the structure or protocols of the performance-based formula rate approved pursuant to this Section.

(220 ILCS 5/16-108(d)(3); see also ICC Staff Ex. 10.0, p 17.) Thus, the Commission does not have authority to approve any further changes to the formula adopted in this proceeding.

7. Rulemaking – Formula Rate Process

Staff and IIEC have virtually nothing to say on this topic except to refer to the ComEd decision in Docket No. 11-0721 ordering the rulemaking. Contrary to IIEC's unsupported allegation, this record is replete with facts and arguments not in the ComEd case, and based on which the Commission can make a more informed decision. The Company's Initial Brief sets forth its position on this issue.

8. Other

IIEC proposes for the first time in its Initial Brie certain "other" modifications to AIC's formula rate tariff. IIEC's recommendations are made too late to be considered and are unsupported by the evidence. IIEC's unfortunate habit of revealing proposals for the first time at the briefing stage interferes with the orderly and complete consideration of issues and must cease.

IIEC contends that three proposals contained in the "Other" section of its Initial Brief were IIEC proposals that were adopted in Docket No. 11-0729, the ComEd initial formula rate proceeding, and that are necessary here for consistency. If these were IIEC proposals in the ComEd case, which was filed over two months before the AIC case, then IIEC clearly knew about them before the time of its brief. However, IIEC never mentioned these proposals in any of its testimony in this case, and never asked any witness about them at hearing.

Moreover, for reasons known only to IIEC, IIEC went to great lengths to avoid revealing them in the briefing outline. Instead, IIEC's counsel insisted in comments to the ALJs that an

"Other" section was necessary in the event there were other issues that came up:

> The use of the term "other" was intended to add flexibility to the outline to insure that if a party concludes in drafting its brief there is an issue or issues that do not exactly fit into a particular caption there will be a place that the issue can be presented. It represents a safety net approach taken in other agreed outlines.

Email from Eric Robertson to ALJs, dated July 2, 2012.

IIEC's position makes no sense. IIEC could have requested a specific caption or captions for its other proposals, but it did not do so. This was not a "safety net" – this was an effort by IIEC to conceal specific policy proposals it intended to make until the last possible second.

There are rounds of testimony for a reason: so that the Commission can receive evidence in an orderly fashion, in which parties submit testimony and other evidence pertaining to the issues in dispute. AIC does not contend that legal issues must be disclosed in testimony, but policy and tariff operation issues such as those raised by IIEC are precisely of the type that benefit from explication and debate in testimony by qualified witnesses. Conjecture of counsel in a brief is no substitute.

Moreover, a briefing outline of the type required by the ALJs allows arguments to be presented in an organized fashion. A refusal by a party to articulate issues it intends to brief—and there can be no doubt that IIEC intended to brief these issues at the time the outline was developed—defeats the purpose of the outline.

For these reasons, IIEC's proposals should be rejected, and IIEC should be directed to cooperate in the orderly development of the record and the briefs in future proceedings.

C. Contested Reconciliation Issues

1. Year End or Average Rate Base

Staff and interveners continue to oppose use of a year-end rate base for reconciliation. Their position should be rejected for the following reasons:

- As explained in AIC's Initial Brief, the language of the EIMA, especially the references to actual costs, requires use of a year-end rate base for reconciliations.

- A number of the parties rely heavily (see e.g., IIEC Init. Br. 42-43), on the ComEd Docket No. 11-0721 decision on the reconciliation rate base issue. However, the Commission has granted rehearing on this issue, so the underlying order does not represent the Commission's final word on the subject.

- Although the parties debate at length what the legislature intended in the EIMA with respect to reconciliation rate base, the Illinois House of Representatives Public Utilities Committee has adopted a Resolution (HR 1157) that expressly states that the Commission's interpretation of the EIMA in the Docket No. 11-0721 order was incorrect.

- The parties, and IIEC in particular, contend that in essence formula ratemaking is still governed by Article IX of the Act as traditional ratemaking – but this argument is legally incorrect.

- The position of parties, including IIEC and the Commercial Group, are based in part on a misunderstanding of the difference between a "rate year" under the EIMA (the year rates are in effect) and the year for which projected plant additions are estimated and ultimately reconciled (the year in which a formula rate initial or update filing is made).

- Staff and interveners argument ignore the important policy consideration that the customer rates should reflect the cost of plant being used to provide those customers service.

- The formula rate setting process is analogous to a historical test year and so use of a year-end rate base is appropriate.

- AIC will not over earn its revenue requirement.

The Grant of Rehearing in ComEd Docket 11-0721 of the Issue of Reconciliation Undercuts the Parties Reliance on That Order.

A number of the parties rely on the ComEd Docket 11-0721 decision on the reconciliation rate base issue. In particular, IIEC states, that the "Commission's interpretation of its enabling statute [in Docket No. 11-0721] is entitled to considerable weight." (IIEC Init. Br. 22.) IIEC argues "The Commission's conclusions of law [in Docket 11-0721], and its decisions on how the formula rate statute should be implemented are relevant—and possibly determinative—in this case." (Id., p. 20.) Likewise, the AG cites the Commission's Order in Docket No. 11-0721 (AG/AARP Init. Br. 76) and the Commercial Group discusses the impact of

the ComEd order over several pages. (Comm. Gr. Init. Br. 4-6.) Staff and CUB also cite the ComEd order. (Staff Init. Br. 57; CUB Init. Br. 33-34.) However, on June 22, 2012 the Commission granted ComEd rehearing on this issue (a point which CUB's, the Commercial Group's and IIEC's Briefs fail to even acknowledge, despite being filed over two weeks after the Docket No. 11-0721 rehearing order was entered), underlying order does not represent the Commission's final word on the subject thus the Docket No. 11-0271 order thus cannot be utilized by the parties as an authoritative Commission pronouncement on the issue.

The Illinois House of Representatives Public Utilities Committee has Adopted a Resolution (HR 1157) that Expressly States that the Commission's Interpretation of the EIMA in the Docket 11-0721 Order was Incorrect.

It should be undisputed that the Commission has only those powers granted to it by the legislature (although, as discussed below, IIEC appears to ignore this bedrock principle). Business and Professional People for the Public Interest v. Illinois Commerce Comm'n, 136 Ill. 2d 192, 201, 555 N.E.2d 693, 697 (1989). Thus, the question on reconciliation rate base is what the legislature has directed with respect to the determination of reconciliation rate base. What the legislature has directed is reflected in the language of the EIMA, not what parties might wish that language to be.[8] As AIC explained in its Initial Brief, the language of the EIMA makes clear that a year-end rate base, not an average rate base, is to be sued for the annual reconciliation. The Public Utilities Committee of the Illinois House recently confirmed as much. HR 1157 was adopted by the Public Utilities Committee on July 11, 2012. It states, in pertinent part:

> WHEREAS, The Energy Infrastructure Modernization Act also provides that the final year-end cost data filed in FERC Form 1 should generally be used to determine rates; and
>
> WHEREAS, No statutory authority was given to the Illinois Commerce Commission to set rate base and capital structure using average numbers that do

[8] IIEC, for example, complains that the formula rate process does not reconcile customer revenues. (IIEC Init. Br. 8-9.) But such a reconciliation is not in the statutory scheme to allow the utility to recover its actual costs annually.

not represent final year-end values reflected in the FERC Form 1, and the Illinois Commerce Commission's use of such average is contrary to the statute; and

WHEREAS, The Illinois Supreme and Appellate Courts have consistently held that, because the administrative agencies are creatures of statute, administrative agencies possess only those powers expressly delegated by law and may not act beyond its statutorily delegated authority;

Thus it is clear that the intent of the legislature was to have a year-end rate base be used for reconciliation—as AIC explained in its Initial Brief.

The EIMA's Reference to Article IX of the Act Does Not Support Use of an Average Rate Base.

IIEC contends that, in essence, formula ratemaking is still governed by Article IX of the Act as traditional ratemaking was. IIEC asserts that the "practices and principles of . . . Article IX regulation have been preserved." (IIEC Init. Br. 16.) IIEC thus treats the EIMA as no more than an interesting side note to Article IX of the Act, setting out little more than a change in ratemaking procedure. IIEC then argues that the question of whether an average or year end rate base should be used is determined by Section 9-211 of the Act, 220 ILCS 5/9-211, which provides that the Commission "shall include in a utility's rate base only the value of such investment which is both prudently incurred and used and useful in providing service to public utility customers." (Id., p. 69.) This argument fails for at least two reasons.

First, as even parties like the AG acknowledge (AG/AARP Init. Br. 70), the EIMA represents a fundamental change in the regulatory structure governing how rates are set for participating utilities. Because the Commission has only the power granted it by the legislature, the Commission must follow the requirements of the EIMA. The EIMA represents a more recent, specific legislative scheme, applicable only to certain participating electric utilities, for setting utility rates. Article IX represents the more general rate setting scheme applicable to other utilities which are not participating utilities. The EIMA establishes a specific process whereby

participating utilities' actual costs for each year are to be recovered through a reconciliation process, and sets out specific protocols for the setting of return on equity and the recovery of certain types of costs. Under well established rules of statutory construction, the EIMA, as the more recent and specific set of statutory provisions, controls over Article IX. Knolls Condo. Ass'n v. Harms, 202 Ill. 2d 450, 459 (2002) ("It is also a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject the specific provision controls and should be applied.") This means that, contrary to IIEC's assertions, the provisions of general applicability, Section 9-211, does not control the specific requirements regarding setting and reconciling the formula rate base set forth in the EIMA and discussed in AIC's Initial Brief.

Second, the language referencing Article IX in the EIMA is not as all encompassing as IIEC's Brief suggests. Although EIMA does reference Article IX, its application is more limited than IIEC argues. Article IX is referenced three times in material relation to the setting of formula rates. First, when the Commission reviews the utility's initial tariff setting out the formula rate structure and protocols, "the Commission shall initiate and conduct an investigation of the tariff in a manner consistent with the provisions of this subsection (c) and the provisions of Article IX of this Act to the extent they do not conflict with this subsection (c)." 220 ILCS 5/16-108.5(c). But IIEC's read of Section 9-211 does create a conflict, because IIEC reads Section 9-211 as requiring use of an average rate base. In fact, the language of Section 9-211 supports use of a year end rate base, because, as described below, at the time rates are in effect, over a year after the year being reconciled (e.g., the rates resulting from the reconciliation of 2013 will be established in 2014 and go into effect January 1, 2015), the "value of such investment which is

both prudently incurred and used and useful in providing service" will be the year end value. Thus, under the EIMA itself and the principles of statutory construction, Section 9-211 must yield to the requirements of the EIMA.

Elsewhere, as IIEC notes in its Initial Brief on several occasions (pp. 10-11, 45, 64) the EIMA requires the review of initial formula rates and subsequent updated cost inputs to be "based on the same *evidentiary standards*, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, the Commission applies in a hearing to review a filing for a general increase in rates under Article IX of this Act." 220 ILC S5/16-108.5(c), (d)(3) (emphasis added). But IIEC does not cite "evidentiary standards" in support of its position—it cites the legal standard of Section 9-211.

The Revenue Requirement for a Given Calendar Year Is Recovered in the Subsequent Year (the "Rate Year") Which Confirms that Year End Rate Base Is Appropriate.

The position of parties, including IIEC, AG/AARP and the Commercial Group, are based in part on a misunderstanding of the difference between a "rate year" under the EIMA (the year rates are in effect) and the year for which projected plant additions are estimated and ultimately reconciled (the year in which a formula rate initial or update filing is made). The rate year is the year rates are in effect—so for example, AIC would file updated cost inputs in May 2013, plus projected plant additions through 2013, and a reconciliation of 2012 costs. The new rates resulting from the update filing would go into effect in 2014, the rate year:

> A participating utility may elect to recover its delivery services costs through a performance-based formula rate approved by the Commission, which shall specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs *to be recovered during the applicable rate year, which is the period beginning with the first billing day of January and extending through the last billing day of the following December*.

220 ILCS 5/16-108.5(c).

IIEC refers alternatively to "rate period" and "rate year". Cf. IIEC Init. Br. 43 with 45. AIC assumes that its reference to "rate period" is the same as a "rate year." IIEC's sets forth its understanding of Section 16-108.5 as:

> Section 16-108.5(c) requires that a Participating Utility determine its initial formula rates (as in this proceeding) using 'final data based on its most recently filed FERC Form 1,' plus cost projections *for the following rate year*. (Id.) (Emphasis added). Similarly, formula rate cost inputs in subsequent reconciliation proceedings must be 'based on final historical data reflected in the utility's most recently filed annual FERC Form 1,' plus projected costs for the *following rate period*.

(IIEC Init. Br. 45) (emphasis added.) This understanding is incorrect. The cost projections, as the language of Section 16-108.5 makes clear, are for the year in which cost inputs are filed, not the following year. So for initial rates, "The utility shall file, together with its tariff, final data based on its most recently filed FERC Form 1, plus projected plant additions and correspondingly updated depreciation reserve and expense *for the calendar year in which the tariff and data are filed* . . . ", 220 ILCS 5/16-108.5(c) (emphasis added), and for the annual update of cost inputs, "The inputs to the performance-based formula rate for the applicable rate year shall be based on final historical data reflected in the utility's most recently filed annual FERC Form 1 plus projected plant additions and correspondingly updated depreciation reserve and expense *for the calendar year in which the inputs are filed*." 220 ILC S 5/16-108.5(d)(1) (emphasis added).

AG/AARP appears to have a similar misunderstanding, stating that, "In May of 2013, the Company will again reset inception rates that will be charged beginning in January 2014, based on FERC Form 1 2012 actual cost inputs, *projections of net plant additions expected in 2014* and with a reconciliation of the Company's 2012 actual revenue requirement to the revenue requirement(s) that were effective during 2012 on a weighted basis." (AG/AARP Init. Br. 8) (emphasis added.) But under the EIMA, the projected plant additions would be for the year in

which the inputs are filed, or in the AG's case, 2013, not 2014.

Correcting AG/AARP's and IIEC's understanding of the formula rates process supports AIC's position on use of year-end rate base. Rates in effect in the rate year (2014 in the example above) will be recovering costs as established in a 2013 filing, using data from the most recently filed FERC Form 1 (2012) and "projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed," or 2013. When rates go into effect in 2014, the 2013 plant additions have been completed, been paid for, and will be used and useful in providing service, so use of a year end rate base is appropriate to match customers rates with the plant providing them service. In the May 1, 2014 update filing, costs and rate base for the prior rate year (2013) will be reconciled, with rates going into effect in the rate year 2015. At that time, over a year will have elapsed since the plant investment was made in 2013, so the reconciled customer rates will still be recovering costs for plant additions completed and in service. For the reasons explained in AIC's Initial Brief (pp. 31-34), use of a year-end rate base for reconciliation is therefore appropriate to match the customer rates with cost of plant serving those customers.

Similarly, the Commercial Group, although correctly noting that the cost information is for the "applicable calendar year," misinterprets AIC's position as suggesting that the revenue requirement is being established for the year rates are in effect (2014 in the example above). In fact, the revenue requirement is being estimated for the applicable calendar year (2013), and it is that year whose revenue requirement will be reconciled in the 2014 update filing under Section 16-108.5(d)(1) of the Act. The rate year would be the year following the year updated cost inputs are filed. There is nothing unusual about a revenue requirement being set based on one year with rates effective in a different year—a traditional historical test year will be for a year

that ends before the year rates go into effect to recover the revenue requirement set based on that year. Thus, for example, AIC filed a rate case in 2009 using a 2008 test year, for which rates went into effect in 2010. Ameren Illinois Co., Order, Docket 09-0306 (cons.) (Nov. 4, 2010), p. 5, 318-19.

The AG also alleges that use of a year-end rate base results in customers paying a return on investment before it is made. But, as discussed above and in AIC's Initial Brief, the opposite is true—customers will not be paying for an investment until after it has been made and is used and useful in providing service. Staff and interveners' argument thus continue to discount the important policy consideration that the customer rates should reflect the cost of plant being used to provide those customers service.

The Formula Rate Setting Process is Analogous to a Historical Test Year.

The AG argues that discussions of traditional test year ratemaking are not applicable in the context of formula rates. (AG/AARP Init. Br. 78.) By contrast, IIEC argues that the Commission's review of the average versus year end rate base issue should involve "issues or approaches common to [] Article IX reviews of test year rate case proposals" (IIEC Init. Br. 47), suggesting comparisons to traditional ratemaking models is appropriate. The parties' contradictory arguments about the applicability of traditional ratemaking principles notwithstanding, as AIC explain in its Initial Brief (pp. 98-99), it is instructive to compare the ratemaking theory behind traditional models with formula rates. The formula rate process is more like a historical test year, because it looks back to "actual cost information" for a prior, or historical year—the reconciliation year, at the time of reconciliation, is a fully historical period. Like historical test years, a "pro-forma" adjustment is made for projected plant additions through the year in which a rate update filing is made. The Commission has traditionally looked at year-end rate base for historical periods. Because the reconciliation period is a fully historical

period, use of a year-end rate base is appropriate to ensure a match between the rates paid by ratepayers and the cost of the plant used to provide them service at that time.

AIC Will Not Over-Earn Its Revenue Requirement.

CUB, the AG/AARP and IIEC argue that use of a year-end rate base will cause AIC to over earn its revenue requirement. As AIC explained in its Initial Brief, this is not the case—AIC will in fact be adversely impacted by the use of an average reconciliation rate base. (AIC Init. Br. 100-101.) AG, in particular, seems to believe that AIC will have unlimited upside to over earn its rate of return, with "even larger" variances than the AG discusses. (AG/AARP Init. Br. 73.) Ultimately, however, this ignores the EIMA's return on equity "collar," which limits AIC's earned return on common equity to 50 basis points above or below the return on common equity set by formula. With this provision, the EIMA mitigates any concern that AIC will over-earn its revenue requirement in the manner AG suggests.

2. Interest Rate on Under/Over Collections

Staff recommends that the Commission adopt an interest rate for reconciliation amounts that is consistent with the "hybrid approach" that the Commission adopted for ComEd in Docket No. 11-0271. (Staff Init. Br. 58.) As AIC noted in its brief, and as Staff acknowledges, the Commission is reconsidering its decision regarding the reconciliation interest rate on rehearing in the ComEd docket. AIC has also explained the various problems with the hybrid approach adopted in Docket No. 11-0271. Staff offers no argument in support of the hybrid approach other than a desire for consistency.

AG/AARP argue that the Commission should adopt either the Company's cost of short-term debt or the hybrid approach from the ComEd docket as the interest rate applicable to reconciliation amounts. AG/AARP's recommendation is premised on its contention that a reconciliation amount "represents a short term obligation" because it will be recovered within a

year. (AG/AARP Init. Br. 82.) As AIC explained in its Initial Brief, this contention is simply false. Reconciliation amounts will not be recovered or refunded within one year. Under the protocols laid out in the EIMA, an underrecovery experienced in Year 1 will be the subject of an update filing in Year 2 and will be reflected in rates in Year 3. Necessarily, any underrecovery in Year 1 will not be fully recovered until the end of Year 3, meaning that the recovery period is two years. Also AG/AARP witness Brosch admits as much. (Tr. 423-24.) But what AG/AARP and CUB are proposing is that an investment with a life beyond one year be funded with debt issued for less than one year. (Tr. 424.) Thus, the matching they suggest exists between the nature of the investment and the nature of the supporting financing does not exist.

AG/AARP contend, oddly, that the specific sources of financing (short term debt, common equity, etc.) cannot be traced to their specific uses. (AG/AARP Init. Br. 83-84; Tr. 418.) What makes this odd is that this is the Company's point. AIC cannot and should not tie a specific cost item to a specific source of financing. Yet, this is exactly what AG/AARP states in the paragraph immediately following the argument regarding the inability to trace dollars from financing source to use: "the purpose of the AG/AARP recommendation . . . [is to] encourage Ameren to incrementally finance such balances with short-term debt". (Id., p. 84.)

The only way AIC can incrementally finance reconciliation amounts with short-term debt, and still recover its actual costs, is assign the short-term debt to the reconciliation amounts and deduct from the capital structure supporting other investments. If the Commission did not deduct them from the capital structure, then the same dollars of short-term debt would necessarily be in two places at once: financing reconciliation amounts and supporting rate base items. Regardless of whether one accepts that dollars cannot be traced from source to sink, what is undeniable is that one dollar of capital financing can only support one dollar of capital needs.

If AIC borrows a dollar on a short-term basis, that borrowed dollar cannot support one dollar of a reconciliation balance and one dollar of rate base. Those two dollars of capital needs require two dollars of financing, not one dollar used twice.

AG/AARP brush aside that concern, citing Mr. Brosch's testimony that what the Commission is really doing is just setting an interest rate, and not prescribing the use of specific capital for specific purposes. (AG/AARP Init. Br. 85.) This makes no sense. Again, if the Commission limits AIC's cost recovery on reconciliation amounts to the cost of short-term debt, the only way that AIC can recover its actual costs—as the EIMA mandates—is if AIC finances the reconciliation amounts exclusively with short-term debt *and* that short-term debt is not deemed to also be supporting other investment. One dollar is just one dollar, not two.

Lastly, AG/AARP's interpretation of the term "interest rate" is far too narrow. AG/AARP suggest that this term excludes reflection of any equity component in the rate applicable to reconciliation amounts. The EIMA is clear that the Company is entitled to recover its "actual costs." As AIC explained in its Initial Brief, AG/AARP's proposed limitation on the meaning of "interest rate" would deny AIC the opportunity to recover its "actual costs" and thereby violate the express terms of the EIMA.[9]

CUB offers no argument that AIC did not fully address in its Initial Brief.

3. Other

D. Other Legal Issues

1. CUB's Additional Steps for Commission Review of Project Costs

IX. OTHER

[9] AIC notes that CUB does not share AG/AARP's view, since CUB recommends that the interest rate on overcollections be calculated at the higher of AIC's overall cost of capital (including the cost of equity) or AIC's short-term debt cost.

A. Resolved or Uncontested Issues

1. Original Cost Determination

2. Uncollectibles Expense – Net Write Off in Rider EUA

3. Net Plant Allocator

4. Depreciation Study

5. Rate Case Expense – Section 9-229 Statement

B. Contested Issues

1. Income Taxes – Interest Synchronization

2. Gross Revenue Conversion Factor

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mark Whitt, an attorney, certify that on July 25, 2012, I caused a copy of the foregoing *Reply Brief of Ameren Illinois Company* be served by electronic mail to the individuals on the Commission's Service List for Docket 12-0001.

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